102d Congress, 1st Session - - - - - - - - - - - - House Document 102-51

THE EXTENSION OF FAST TRACK PROCEDURES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT THAT INCLUDES HIS REQUEST FOR THE EXTENSION OF FAST TRACK PROCEDURES FOR THE CONSIDERATION OF IMPLEMENTING LEGISLATION WITH RESPECT TO TRADE AGREEMENTS ENTERED INTO AFTER MAY 31, 1991, AND BEFORE JUNE 1, 1993, TOGETHER WITH A DESCRIPTION OF THE PROGRESS MADE TO DATE IN BILATERAL AND MULTILATERAL TRADE NEGOTIATIONS, THE ANTICIPATED SCHEDULE FOR TRANSMITTING SUCH AGREEMENTS TO THE CONGRESS, AND A STATEMENT OF THE REASONS SUPPORTING HIS REQUEST FOR AN EXTENSION OF FAST TRACK PROCEDURES

MARCH 4, 1991.—Message and accompanying papers referred to the Committees on Ways and Means and Rules, and ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE
40-445 WASHINGTON : 1991

H780-8

MAR 4 1991

The message and accompanying papers referred to the Committee on Ways and Means AND Committee on Rules

PRINT

TO THE CONGRESS OF THE UNITED STATES:

Pursuant to section 1103(b)(2) of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100-418; 102 Stat. 1129), I transmit herewith a report that includes my request for the extension of fast track procedures for the consideration of implementing legislation with respect to trade agreements entered into after May 31, 1991, and before June 1, 1993, together with a description of the progress made to date in bilateral and multilateral trade negotiations, the anticipated schedule for transmitting such agreements to the Congress, and a statement of the reasons supporting my request for an extension of fast track procedures.

TCW

2-51

The fast track mechanism has played a vital role in U.S. trade policy for many years. It strengthens the hand of our trade negotiators and preserves the important role of the Congress in the shaping of U.S. trade policy. The continued availability of the fast track procedures over the next 2 years will ensure that our negotiators can bring to the Congress for its consideration trade agreements that will truly enhance the ability of the United States to compete internationally.

At a time when world events have reconfirmed the importance of U.S. leadership in multilateral efforts, maintaining fast track is essential to our leadership in the global trading system.

My request reflects my strong desire to continue the partnership between the Congress and the executive branch that the fast track represents. This partnership is essential if we are successfully to meet the world's growing economic challenges into the next century.

THE WHITE HOUSE,
March 1, 1991.

REPORT TO THE CONGRESS
ON THE EXTENSION OF FAST TRACK PROCEDURES

Pursuant to Section 1103(b)
of the
Omnibus Trade and Competitiveness Act of 1988

Submitted by the President

March 1, 1991

FOREWORD

The Fast Track and Why It Is Essential

For the better part of this century, Congress and the Executive have recognized that the negotiation and implementation of trade agreements require special cooperation between the two Branches. In the aftermath of the record-high rates of the Smoot-Hawley Tariff Act of 1930 and the Depression that they helped fuel, both Congress and the Executive came to realize that only by working closely together in the exercise of their constitutional responsibilities could the two Branches effectively bring down foreign barriers to our trade and open opportunities for U.S. products and services in the international marketplace.

This new partnership was reflected in the Reciprocal Trade Agreements Act of 1934, which gave the President authority not only to conclude tariff-cutting agreements but also to implement them by proclamation without the need for subsequent legislation. During the following years, when the principal barriers to trade were tariffs, this arrangement proved highly successful and was responsible for the tariff reductions that promoted post-World War II economic growth, particularly in successive rounds of multilateral tariff-cutting negotiations.

As countries began to rely less on tariff protection and more on non-tariff trade barriers, the scope of trade negotiations broadened, and the "fast track" procedures were created by Congress as the necessary complement to this broader trade agenda.

Fast track procedures for approval of trade agreements were included by Congress in trade legislation in 1974, 1979 and again in the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"). While giving Congress the assurance of meaningful participation throughout the negotiating process, fast track also provides two guarantees essential to the successful negotiation of trade agreements: (1) a vote on implementing legislation within a fixed period of time, and (2) no amendments to that legislation.

These procedures reflect an understanding that trade agreements, in which results in one area are often linked to results in others, are particularly vulnerable to multiple amendments that, while possibly small in themselves, could unravel entire agreements. Whether the balance of benefits contained in any trade agreement is in the overall interest of the United States can only be determined by looking at the whole package.

Through the fast track, Congress has given the President the same bargaining power possessed by his counterparts: the ability to assure his negotiating partners that the agreement reached internationally would be the agreement voted on at home. Without fast track, the President cannot give his negotiating partners that assurance. Without that assurance, foreign governments are reluctant to negotiate with the United States and will not make the tough concessions necessary to reach agreements the United States would be willing to sign. No negotiating partner will give its bottom line knowing that the bargain could be re-opened.

On the basis of fast track procedures, the United States has negotiated and implemented three remarkable trade agreements, each of which was approved by an overwhelming majority in both houses of Congress. These agreements -- the results of the Tokyo Round of GATT negotiations in 1979, the free-trade agreement ("FTA") with Israel in 1985, and the FTA with Canada in 1988 -- have reduced barriers to trade and provided a powerful engine for economic growth in the United States and worldwide.

The United States has much to gain through trade agreements that open markets and provide rules for free and fair trade. Maintaining the fast track will preserve our ability to continue efforts to liberalize trade and open markets through the GATT, through other multilateral agreements, and through bilateral agreements.

Extension of Fast Track Continues a Cooperative Relationship

Fast track procedures preserve Congress's role during the negotiation, approval and implementation of trade agreements. To ensure congressional and private sector input, the fast track statute contains extensive notification and consultation requirements. At each step along the way, from initiation through implementation, Congress is an active partner.

To use the fast track for any agreement, bilateral or multilateral, the President must notify Congress 90 calendar days before signature. By the time the President gives his 90-day notification, our many private sector advisory committees must report their views on the agreement both to Congress and the President. For bilateral agreements, Congress must be given advance notice of the negotiations; during the following 60 legislative working days, either the Senate Finance or House Ways & Means Committee can vote to deny fast track treatment.

Once an agreement is reached, Congress and the Administration work in close consultation to formulate implementing legislation. The process has involved the full participation of all committees of jurisdiction, and not only those committees traditionally consulted in setting trade negotiating objectives. If the agreement and its implementing legislation are still not acceptable, they can be rejected by majority vote of either house. In fact, as a result of the extensive consultations with Congress and the private sector, the agreements that have been implemented under fast track procedures enjoyed widespread support when they were presented to Congress.

We find ourselves today engaged in bilateral and multilateral trade initiatives that hold unprecedented promise for the advancement of U.S. economic objectives. With such initiatives in the balance, now is not the time to dissolve a partnership that has endured for almost sixty years.

Continuing Fast Track is Essential to Securing Economic Gains

In incorporating the fast track in the 1988 Act, Congress expressly contemplated that an extension of the provision beyond June 1991 might be necessary and appropriate in order for the President to pursue effectively the trade policy objectives set out in the law.

The continued availability of fast track procedures over the next two years -- during which we expect to complete the Uruguay Round of multilateral negotiations, negotiate a North American Free Trade Agreement with Mexico and Canada, and pursue the trade objectives of the Enterprise for the Americas Initiative -- will enable our negotiators to bring to Congress for its consideration trade agreements that will enhance the ability of the United States to compete internationally. Supporting fast track now will allow these important negotiations to go forward without in any way detracting from Congress' ability to assess each agreement on its merits when presented for approval.

The Uruguay Round. These complex negotiations with 107 other nations (many of which are not fully integrated into the multilateral trading system) offer rich opportunities to break down trade barriers and expand the scope of international trade rules.

- Since their inception in 1986, the Uruguay Round negotiations have been conducted in fifteen areas. Our objectives include more open markets, internationally agreed rules in areas not previously covered by multilateral agreements (services, investment, intellectual property rights), and institutional improvements in the GATT. The negotiations have been difficult, and important issues remain, but there has been significant progress overall toward our objectives. That progress should not be abandoned.
- The United States had hoped to conclude the Uruguay Round last December at a ministerial level meeting in Brussels. However, the status of the negotiations on

several subjects at that time did not warrant conclusion -- particularly on agriculture. The unwillingness of the European Community ("EC"), as well as Japan and Korea, to accept a framework for agricultural reform impeded progress in the negotiations in all areas.

- We are encouraged by a recent statement of GATT Director-General Arthur Dunkel that all participants have now agreed to negotiate specific binding commitments in each of the key areas of agricultural reform, thus clearing the way for the resumption of negotiations. However, important differences in agriculture and other areas remain. Much hard bargaining lies ahead.

- The United States refused to accept a deficient Uruguay Round package in Brussels. Our high standards have not changed. Although ultimate success in the Uruguay Round cannot be guaranteed, we believe the United States should continue negotiations because a successful Round is overwhelmingly in our long-term economic interests.

North American FTA. We have a historic opportunity to achieve a North American Free Trade Agreement ("NAFTA") with Canada and Mexico. The Mexican Government has been pursuing a dramatic opening of its trading regime and has introduced market-oriented domestic reforms that benefit both Mexico and the United States. Building on those reforms and on the existing FTA we have with Canada, we can create a NAFTA that encompasses some 360 million people with almost $6 trillion in output. A comprehensive NAFTA will create growth and better jobs in all three countries, and will make us more competitive in the global marketplace.

Extension of fast track will be essential for these negotiations, which are expected to begin in late Spring.

Enterprise for the Americas Initiative. An extension of fast track will also enable the United States to take steps in the next two years toward fulfillment of the trade objectives of the Enterprise for the Americas Initiative (EAI), announced in June 1990. Although it is likely that few Latin American nations will be in a position to enter into FTA negotiations with the United States before June 1993, the United States must continue to be able to respond to the increasing pace of economic liberalization in the region.

* * * * *

The United States has an enormous stake in the future of the global trading system. Exports have become a vital source of strength to the U.S. economy. In 1990, the nearly 8.5 percent growth in U.S. exports accounted for 88 percent of U.S. GNP growth. Since 1986, expanded exports have accounted for over 40 percent of the growth in U.S. GNP. In order to sustain the expansion of exports and consequent growth, we must continue our efforts to open world markets. We must maintain our active leadership role. Without an extension of fast track, those efforts and that role are placed in jeopardy.

Preserving fast track procedures -- and the partnership between Congress and the Executive Branch which fast track represents -- will keep on course our joint efforts to liberalize trade and open markets through the initiatives described above and through other multilateral and bilateral agreements. No country stands to gain more from those efforts than the United States.

As we approach the beginning of a new century, we should not hesitate to pursue the opportunities for economic growth and prosperity presented by successful trade negotiations. In order to turn those opportunities into realities, Congress and the Executive must continue to work together in the manner envisioned by the fast track.

INTRODUCTION

This report sets forth the basis for the President's request to extend for an additional two years the fast track procedures for the implementation of bilateral and multilateral trade agreements.[1]

As required by section 1103(b)(2) of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), this report includes:

(a) a description of all trade agreements that have been negotiated under the 1988 Act and the anticipated schedule for submitting such agreements to the Congress for approval;

(b) a description of the progress that has been made in multilateral and bilateral negotiations to achieve the purposes, policies, and objectives set forth in the 1988 Act, and an explanation of why such progress justifies the continuation of negotiations; and

(c) the reasons why the extension is needed to complete the negotiations.

---

[1] Trade Act of 1974, Pub. L. 93-618, §§102, 151, 88 Stat. 1982, 2001 (1975), *codified at* 19 U.S.C. §§2112, 2191 (1988); Trade Agreements Act of 1979, Pub. L. 96-39, § 1101, 93 Stat. 307 (1979); Trade and Tariff Act of 1984, Pub. L. 98-573, §401(a)(6), 98 Stat. 3013-15 (1984); Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, §§ 1102, 1103, 102 Stat. 1135 (1988).

I. PROGRESS MADE IN NEGOTIATIONS

Negotiations of trade agreements under section 1102(b) or (c) of the 1988 Act have taken place primarily in the context of the Uruguay Round of Multilateral Trade Negotiations.[2] Significant progress has been made in pursuit of the objectives set forth in section 1101 of the 1988 Act in the course of the Round.[3] Substantial economic benefits will accrue to the United States if the Round is pursued to its successful conclusion. Although significant progress has been made and negotiations have been completed in some areas, the Uruguay Round has not yet culminated in final agreement in any area under negotiation. In some areas, final agreement is dependent only on satisfactory results in other negotiating groups; in other more complex areas, further negotiations are necessary. The progress achieved to date in these complex negotiations with 107 other nations (many of which are not fully integrated into the multilateral trading system), and the potential gains for the U.S. economy, clearly justify the continuation of fast track procedures.

A. Trade Agreements Under Negotiation

The Uruguay Round negotiations are conducted under the auspices of the General Agreement on Tariffs and Trade (GATT). The mandate for negotiations was agreed by consensus at a meeting of trade ministers at Punta del Este, Uruguay, in 1986.[4] A Trade Negotiations Committee (TNC), chaired at Ministerial level currently by Foreign Minister Gros-Espiell of Uruguay and at official level by GATT Director-General Arthur Dunkel, oversees the negotiations. Since 1987, negotiations have been conducted in 15 negotiating groups -- the Group of Negotiations on Services (GNS) and the 14 negotiating groups of the Group of Negotiations on Goods (GNG).[5]

---

[2] The United States also has been engaged in negotiations in related areas outside the scope of the Uruguay Round. For example, multilateral negotiations concerning subsidies practices with regard to shipbuilding, steel, and space launch services have been conducted. The successful completion of these negotiations would further the objectives of the 1988 Act and complement the results of the Uruguay Round.

[3] Section 1101 of the 1988 Act, enacted two years after the Uruguay Round was launched, provides overall and principal U.S. negotiating objectives that have served as the road map for U.S. negotiators during the final two years of the Round.

[4] A copy is provided in the Annex as Attachment B.

[5] Table 1 in the Annex provides a list of the Uruguay Round negotiating groups.

At Punta del Este it was agreed that the negotiations would be treated as a single undertaking, in order to assure that progress would be achieved in all areas being negotiated before the Round could be successfully concluded. Thus, participants consider the Uruguay Round as a package of agreements, with progress in one area affecting progress in others. The United States seeks substantial results in all areas of negotiation and seeks to obtain the widest possible participation in the final package of agreements, particularly by developing countries.

The Uruguay Round negotiations fall into four broad categories:

(1) Market Access (this includes tariffs and non-tariff measures, natural resource based products, tropical products and textiles);

(2) GATT Rules (rules necessary to protect and guarantee market access and concessions negotiated: dispute settlement, safeguards, GATT Articles including balance of payments reform, and the non-tariff measure codes, including subsidies and antidumping);

(3) Agriculture; and

(4) The "New" Areas (services, trade-related intellectual property rights (TRIPs), trade-related investment measures (TRIMs)).

A detailed description of the progress to date in each of these negotiations is provided in the Annex to this report.

B. Progress in and Status of Negotiations

1. Introduction

The Ministerial meeting concluded in Punta del Este, Uruguay, on September 20, 1986, formally launched the eighth round of multilateral trade negotiations conducted under the auspices of the General Agreement on Tariffs and Trade (GATT). Ministers confirmed an international consensus for negotiations on the most complex set of trade talks to date. The United States led the call for these negotiations and led the development of the far-reaching agenda supported by the Congress and private sector. The agenda runs the gamut of U.S. interests. Long-standing areas of importance not adequately addressed within GATT, such as agriculture, are included. Major agenda items for negotiation include strengthening the GATT as an institution and extending its rules to the more recent issues confronting the trading system in services, intellectual property protection and investment. Unlike previous GATT negotiating rounds, developing countries are active participants in every aspect of the negotiations.

At Punta del Este, ministers agreed that the Uruguay Round was to conclude in four years -- by the end of 1990. Although there has been substantial progress toward fulfilling the negotiating objectives set out in the 1988 Act, it has not been possible yet to conclude the Round. The overall progress achieved to date, as outlined in this report, clearly warrants continuation of the negotiations.

The importance of strengthening the multilateral trading system has increased substantially given the dramatic developments around the globe since 1986. Since the Round was first launched in 1986, the number of countries seeking to reinforce their own economic reforms by assuming the obligations of GATT membership has increased, especially in Latin America and Eastern Europe.[6] The United States supports these efforts at economic reform and the development of democratic institutions.

The developing countries have emphasized agriculture, the traditional areas of market access and GATT rules. They reluctantly agreed in 1986 to negotiate on the new areas of services, intellectual property protection and investment. These agenda items were included as subjects for negotiation primarily at the insistence of industrialized countries. However, in the course of the four years of negotiation, developing countries have accepted that these areas are also fundamental to strengthening the trading system and key to their own development and growth.

The inability to conclude the Round by the internationally agreed deadline cannot be attributed to a single factor or solely to the position of one participant in the negotiations. However, the limited progress in the negotiations on agricultural reform has affected progress at every important phase of the negotiations. The complex Uruguay Round agenda, and the reform efforts around the globe in all economies, particularly the dramatic changes in Eastern Europe and the developing world, have understandably slowed the pace of progress in the negotiations. Most recently, the situation in the Persian Gulf has complicated efforts to achieve satisfactory agreements within the current timeframe provided by Congress.

---

[6] Table 2 lists the 108 countries, including the United States, participating in the Uruguay Round. That list includes the new members that have acceded to the GATT since 1986.

2. Summary of Progress to Date

After the meeting of ministers at Punta del Este, the remainder of 1986 was devoted to making organizational arrangements for the negotiations and developing plans for negotiating groups. In early 1987, the first cycle of negotiating sessions began and governments started the process of tabling proposals for work to be done in each area.[7]

The unprecedented agreement to conduct and conclude negotiations in a four-year period led participants to agree to hold a ministerial-level meeting for a "Mid-Term Review" of progress in December 1988 in Montreal, Quebec, Canada. The objective of the Mid-Term Review was to consider reaching early agreements in some areas, if possible, and to move the negotiations to advanced stages in other areas, by developing frameworks in each negotiating group for negotiations during the remaining two years of the Round.

At the Montreal meeting, frameworks for completing the negotiations were agreed in 11 out of the 15 negotiating areas (with no agreement reached on frameworks for agriculture, intellectual property, textiles and safeguards). Differences of view on how to define and negotiate the long-term objectives of agricultural reform postponed the completion of the Mid-Term Review until those differences could be resolved. Developing country members of the "Cairns Group"[8] of agricultural exporters argued that the agreement to treat the Round as a single undertaking required that progress be made on an agriculture framework agreement in order to reach agreement on frameworks in all other areas. As a result, the Montreal meeting adjourned without adopting any frameworks, and talks continued on frameworks for agriculture, intellectual property, textiles, and safeguards; further progress in areas other than those four areas was halted, awaiting their outcome.

Framework agreements were finally adopted for all 15 negotiating groups at a meeting of senior officials in Geneva in April 1989, reflecting substantial progress on substantive issues. However, the loss of almost five months -- due in large part to differences over agriculture -- was a serious setback to the overall timetable for the negotiations.

---

[7] The chronology provided at the end of this report cites the proposals submitted by the United States during the course of negotiations. All of these proposals were the subject of detailed consultation with relevant Congressional and private sector advisory committees.

[8] The "Cairns Group," named after the location in Australia where it held its first meeting, consists of Argentina, Australia, Brazil, Canada, Chile, Colombia, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand, and Uruguay.

The Mid-Term Review, once formally concluded, successfully narrowed the issues for negotiation in all areas, while retaining negotiating objectives vital to the United States. In addition to establishing road maps for eleven negotiating groups, the Mid-Term Review yielded important interim agreements that were implemented provisionally during the remainder of the Round. Those interim agreements included improvements to GATT Dispute Settlement Procedures; a Trade Policy Review Mechanism to subject Contracting Parties' trade policies to a formal review; a "standstill commitment" not to increase support and protection in agriculture during the remainder of the negotiations; and a package of market access liberalization in tropical products as called for in the Punta del Este declaration.

In July 1989, the Trade Negotiations Committee (TNC) established a timetable for the remainder of the negotiations: (1) by the end of 1989 governments were to have tabled proposals and/or clarified positions in all 15 negotiating groups; (2) by July 1990 a profile of the final Uruguay Round package was to be submitted, which meant each negotiating group was to have produced a provisional agreement or a negotiating text; and (3) the period from August through November 1990 was to be used to prepare the package of agreements for Ministerial approval, including addressing the legal nature of the agreements and their relationship to the GATT.

Important developments occurred in all areas of the negotiations between July 1989 and July 1990, although fundamental disagreement in agriculture as well as differences in approach in market access negotiations (including manufactures, agriculture, and textiles) forestalled the progress that could have been achieved. Nevertheless, the groups continued to make progress in technical areas. Although technical work in agriculture proceeded, there was no agreement on the shape of the reform package to be negotiated nor whether it would include specific binding commitments to reduce export subsidies, barriers to market access, and internal trade-distorting support. All of these developments are addressed in the Annex to this report.

Agreement was reached at the Houston Economic Summit in July 1990 among the Heads of State of the Group of Seven nations on the importance of the negotiations to the global economy. They recognized that multilateral cooperation in the economic sphere would play an increasingly greater role in strengthening political and security cooperation. The Heads of State addressed all areas of the negotiation, including the absence of a common framework for negotiations in agriculture. They undertook to remain personally involved in bringing the negotiations in agriculture, and the negotiations overall, to a successful conclusion.

Shortly after the Houston Economic Summit, the Trade Negotiations Committee (TNC) met in Geneva to review progress in the negotiations with a view to establishing another timetable for completing the package of agreements for Ministerial review and approval in Brussels, December 3-7, 1990. It became evident at this meeting in Geneva that the ambitious timetable established by the TNC at its July 1989 meeting would be very difficult to meet. Fundamental disagreement continued in agriculture, and countries were unable to endorse a definitive framework for further negotiations. Negotiating texts that could provide a basis for eventual agreement had not been produced in all areas and substantial technical issues remained outstanding. The TNC was unable to develop a clear profile of the final Uruguay Round package, but was able to identify the major points of disagreement still remaining in each group. Nonetheless, governments agreed to intensify efforts in the time remaining to present ministers in December with substantially completed agreements so that political decisions to complete the negotiations could be taken.

To facilitate these efforts, it was agreed that all "offers" in all sectors were to be tabled by mid-October 1990. Agriculture offers were to be based on the framework prepared by the Chairman of the Agriculture Negotiating Group[9] and endorsed by Heads of State at Houston as a means to intensify negotiations.

Insufficient progress in meeting deadlines, compounded by what many perceived to be insufficient offers in agriculture, greatly impeded the pace of the negotiations overall. The United States presented a revised offer on market access that was comprehensive in coverage and included the important reciprocal duty elimination initiatives developed by the U.S. private sector. The U.S. offer in agriculture, following the framework agreed upon in Houston, was submitted on October 15, 1990. Offers in agriculture from major participants such as Japan and the EC, which did not present its offer until November 7, fell short of the deZeeuw framework. The problem in agriculture led to ministerial-level consultations between the United States and the Cairns Group. Subsequently, the Cairns Group chose to proceed with the preparations for Brussels and to reassess the format of the Ministerial meeting once offers by all countries were tabled and evaluated.

---

[9] The Agriculture Negotiating Group was chaired by Aart deZeeuw, Director-General for Agriculture, The Netherlands. The draft framework that he prepared is widely known as "the deZeeuw text."

On November 26, the TNC meeting in Geneva completed a draft "Final Act"[10] for use by the TNC meeting at Ministerial-level in Brussels on December 3-7, 1990. This document contains negotiating texts and/or reports of each of the Uruguay Round negotiating groups, accompanied by the major questions requiring resolution by ministers at the Ministerial session. Official draft negotiating texts to use as a basis for concluding agreements in agriculture, balance of payments reform and antidumping and trade-related investment measures were missing entirely from the draft Final Act, since no agreement could be reached on texts to be included. In areas for which texts were included, those texts merely reflected the basis for consideration at the political level, and did not represent agreement among participants.[11]

The Annex to this report provides details on the progress made in each of the negotiating areas to date. Lack of progress in agriculture affected all other areas of the negotiation, particularly the areas of market access and the new issues of intellectual property protection, services and investment. Discussions on each of these and other negotiating issues continued, but without major breakthroughs. It became evident that if the Uruguay Round were concluded in Brussels, the results would not meet the objectives of a majority of participants.

The United States delegation went to Brussels believing that the ministerial meeting could yield an agreement at the political level in all areas, enabling negotiators to complete the technical work necessary to conclude final agreements before March 1, 1991. If such progress had been made at Brussels, it would have been possible to conclude the negotiations within the time frame of current fast track procedures.

---

[10] The draft Final Act embodying the results of the Uruguay Round negotiations was circulated as an informal TNC document (MTN.TNC/W/35) on November 26, 1990. On December 3, 1990, a revision of that document (MTN.TNC/W/35/Rev.1) was distributed at the Brussels ministerial meeting. The revisions were limited to corrections of typographical errors and other purely technical corrections. References to the draft Final Act in this report, and in the Annex to this report, are to MTN.TNC/W/35/Rev.1, a 392-page document is being submitted to the President of the Senate and the Speaker of the House of Representatives as Attachment D to this report. Due to the considerable length of that document, only a limited number of copies are available from the Office of the U.S. Trade Representative, Office of Public Affairs.

[11] In some texts, the chairman of the negotiating group had identified particularly contentious portions by enclosing them in square brackets ([ ]). However, in other texts, significant portions that have not been agreed were not bracketed and do not reflect adequately the number of outstanding issues to be negotiated. Thus, the abundance or paucity of bracketed text does not indicate the proximity of the negotiating group to reaching final agreement.

The disagreement on agriculture persisted in Brussels throughout the week and set the pace for work in all other areas of the negotiation. At the Brussels meeting Swedish Agriculture Minister Mats Hellstrom chaired the ministerial negotiations on agriculture. The EC, Japan and Korea ultimately rejected a proposal by Chairman Hellstrom setting forth a compromise framework for negotiations on agricultural reform. The Chairman's framework provided for specific commitments to reduce export subsidies, internal support, and barriers to market access. Although far from perfect, the Chairman's framework was supported as an acceptable basis for negotiation by all other countries. However, once the text was rejected by the EC, Japan and Korea, it was clear that the meeting would end without result, because many developing countries withdrew their negotiators from other negotiating sessions.

Following the breakdown of talks at the Brussels Ministerial meeting, the TNC instructed GATT Director-General Dunkel to seek through consultations to establish a basis for concluding the negotiations, and the United States participated actively in those consultations. On February 20, 1991, the Director-General stated that with respect to agriculture, his consultations had confirmed that participants agree to conduct negotiations to achieve specific binding commitments on each of the following areas: domestic support; market access; export competition; and to reach an agreement on sanitary and phytosanitary issues. This agreement cleared the way for the resumption of negotiations. On February 26, he convened the TNC and announced a schedule of technical meetings to resume negotiations in agriculture as well as all other areas of the Round.

The results of the Director-General's consultations are encouraging. Recent steps within the EC toward reform of its Common Agricultural Policy may over time enable the EC to negotiate serious commitments on agriculture. If the EC is willing to agree to market access and reform in agriculture, Latin American countries and others will be willing to open their markets to manufactured goods and services. However, important differences in agriculture and other areas remain. Much hard bargaining lies ahead.

Negotiations are now underway in Geneva involving the full range of negotiating issues in order to reach agreement on a comprehensive Uruguay Round result.

3. Consultations with Congress and the Private Sector

At every step in the negotiations, the Administration conducted extensive domestic consultations to develop negotiating positions and proposals. During the negotiations the Administration has formally submitted some 122 proposals or other position papers, each the subject of such domestic consultations. These consultations continue to be an integral component of the negotiating process.

Throughout the four years of negotiation, the United States has exercised a leadership role in seeking far-reaching results in all areas of the negotiations to the benefit of the global economy. This effort reflects the close cooperation and consultation that the Administration has enjoyed with the relevant Congressional committees and staffs and the Congressionally-mandated private sector advisory committees. Congressional members and staffs and private sector advisory committee members accompanied Executive Branch delegations to the meeting that launched the Uruguay Round in Punta del Este, the Mid-Term Review meetings in Montreal and Geneva, and most recently, to the Brussels Ministerial meeting.

C. Anticipated Schedule for Submission of Agreements to Congress

As discussed in greater detail in the Annex, the Administration is continuing its efforts to conclude the Uruguay Round negotiations as soon as possible. These negotiations, which ended without result at the ministerial meeting in December 1990, resumed in Geneva at the end of February 1991. However, the Uruguay Round agreements could not be concluded within the timeframe established under existing fast track procedures, i.e., by March 1, 1991.

The Punta del Este Declaration mandates in the General Principles Governing Negotiation that:

> "[t]he launching, the conduct and the implementation of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or definitive basis by agreement prior to the formal conclusion of the negotiations. Early agreements shall be taken into account in assessing the overall balance of negotiations."

The Administration intends to continue to pursue conclusion of the negotiations as a single undertaking and to submit the agreements accordingly to the Congress. This will be the most effective means to assure the far-reaching results called for in U.S. negotiating objectives. To do otherwise would be contrary to the advice received during the course of consultations with the private sector and Congress on achieving U.S. goals in the negotiations.

Since the negotiations have only just resumed, it is not possible at this juncture to provide the Congress with a precise schedule for concluding the Uruguay Round and for the submission of its agreements to Congress. It remains the Administration's intent to conclude the negotiations as rapidly as possible while meeting fully the objectives established. The United States, along with its trading partners, will need to re-evaluate the negotiations overall in setting a new timeframe in which to conclude negotiations. This is a matter that requires additional consultation with the Congress and the private sector, and our trading partners.

The exact pace of negotiations will depend on how quickly we are able to reach an acceptable solution on agriculture. We are not prepared to accept an inadequate agreement for sake of an agreement; but we are prepared to negotiate for another two years if necessary to obtain a good result.

There has not been an agreement or timeframe established internationally for concluding the negotiations. However, it clearly is a matter of serious concern to all governments that have devoted substantial resources and efforts to the negotiations and, like the United States, planned for a four-year negotiation. In view of the increased benefits to the global economy of a successfully concluded negotiation, our trading partners support a rapid conclusion to the talks. We anticipate that other governments will want to take into account the pace of progress in the negotiations, other international issues, domestic economic initiatives and developments related to the situation in the Persian Gulf before considering a more precise timetable for concluding the Round.

II. REASONS FOR EXTENSION OF FAST TRACK PROCEDURES

The continued availability of fast track procedures until June 1, 1993, is essential to the negotiation and conclusion of agreements that fulfill the purposes and objectives of the 1988 Act, including the results of the Uruguay Round of multilateral trade negotiations, the North American Free-Trade Agreement with Mexico and Canada, and a possible free-trade agreement or agreements with other Latin American countries under the Enterprise for the Americas Initiative.

A. Uruguay Round

Extension of fast track procedures in order to conclude the Uruguay Round with agreements that meet U.S. negotiating objectives is warranted. This can be justified on the basis of progress achieved in the negotiations to date, and on the resolve expressed by all participants to resume negotiations and make progress in **all** areas.

1. Benefits of Uruguay Round Agreement

The Uruguay Round, when successfully concluded, should provide substantial benefits to the U.S. economy, including:

- Lower tariff and non-tariff barriers to manufactured products and other goods, which could increase U.S. output by over $1 trillion over the next 10 years, meaning an additional $16,000 for every American family of four;
- Rules to protect the intellectual property of U.S. entrepreneurs, who lose $60 billion annually through the theft and counterfeiting of their ideas;
- New markets for U.S. services firms, which export $115 billion annually and generate 90% of new U.S. jobs;
- An agreement opening world markets to investment, which helps generate $240 billion, or two-thirds of total U.S. exports in goods;
- Fair competition and open markets in agriculture, creating new opportunities for American farmers, who lead the world with more than $40 billion in annual exports;
- The full participation of developing countries in the global trading system, which could increase U.S. exports by $200 billion over the next ten years; and
- Strengthened rules on dispute settlement, antidumping, subsidies and trade remedy provisions, that should provide predictability and certainty in access to foreign markets and to ensure fair trade at home.

The GATT has contributed significantly to the rapid growth of world trade by facilitating a reduction of trade barriers and providing a set of internationally-recognized rules of fair play. As the world's largest economy and largest exporter of goods and services, the United States has benefited enormously from this rapid trade growth. However, the world trading system is now vastly more complex than it was when the GATT was written. The Uruguay Round negotiations are an important and ambitious effort to strengthen, update, and extend the GATT as well as to further lower trade barriers. Success of the Round is thus very important.

The opening of markets around the world stemming from the successful completion of the Round would boost U.S. and world growth and living standards. However, the benefits of

successfully completing the Uruguay Round are much greater than the sum of the gains from the individual parts. Completion of the Round is important to the continued widespread acceptance of the GATT system and therefore to the health of the world trading system. A failure of the talks could increase protectionist pressures around the world and lead to higher trade and investment barriers. Just as trade expansion spurs growth and prosperity, a widespread raising of trade barriers would reduce long-term growth and lower living standards. Moreover, if the closing of markets were abrupt and severe enough, it could contribute to a worldwide recession.

2. Basis for Concluding the Round

As indicated above, the Brussels Ministerial session ended on December 7, 1990, without concluding the Uruguay Round as anticipated. At Brussels, the United States delegation (which included Executive Branch, Congressional and private sector representatives) along with other important delegations determined that it was preferable to end the ministerial meeting without result rather than to lower ambitions and accept minimal Uruguay Round agreements that fell far short of the objectives established.

The Annex to this report provides a detailed report of progress to date in pursuing U.S. negotiating objectives in the Uruguay Round of Multilateral Trade Negotiations. The bulk of the progress reported deals with the negotiations up to and including developments in Brussels. The draft "Final Act" (TNC/W/35), submitted to the Trade Negotiations Committee for consideration by ministers meeting in Brussels reflects the last formal draft negotiating texts. It clearly requires additional revision and negotiation before it could be acceptable to the United States. However, the draft Final Act could provide a basis on which to conclude these important negotiations, if important omissions are addressed and if it is modified to reflect recent developments.[12]

In the period since the Brussels meeting, the United States has participated in consultations organized by the Director-General to resolve the impasse on agriculture. In addition, the United States has taken the initiative through bilateral consultations with several other delegations to move negotiations forward on market access and services. It was evident in

---

[12] The progress that was made in Brussels in many areas of the negotiation was not formally recorded. However, it is expected that developments in Brussels will be taken into account in the final phase of the negotiations.

Brussels that additional work and bilateral consultations in these areas was necessary if the United States were to conclude agreements that meet U.S. objectives. As a result of post-Brussels consultations prior to the formal resumption of negotiations, the circumstances in agriculture, market access, and services have changed, as outlined below.

a. Agriculture

There is an increasing convergence of views among all participants in the negotiations on the urgent need for fundamental reform of agriculture. This convergence reflects an important evolution in the negotiations. All participants are now prepared to negotiate specific binding commitments in each of the key areas of agricultural reform, as confirmed by the GATT Director-General on February 20, 1991. The scope of the commitments, the duration of the reform and the appropriate base period remain subjects for further negotiation.

The Administration is encouraged by the serious debate now underway within the European Community on internal reform of the Common Agricultural Policy (CAP). The determination that is evident in EC efforts to address the pressing problems created by aspects of the CAP cannot be divorced entirely from the Uruguay Round negotiations. These efforts should provide a basis for more constructive participation by the EC in multilateral reform efforts.

Similarly, the Governments of Japan and Korea, which along with the EC rejected a framework for reform at Brussels, are now prepared to negotiate reform using a common framework that calls for specific commitments in each of the three pillars of the negotiations: reduction in internal supports, export subsidies, and barriers to market access. These governments have indicated a willingness to undertake commitments, including commitments to increased liberalization of market access.

b. Services

Despite the very recent resumption of formal negotiations, changed circumstances are also evident in services. Discussions at Brussels on trade in services highlighted the concerns that the United States maintained over the course of negotiations -- the inability to accept a Uruguay Round services framework agreement of rules and disciplines without specific commitments to liberalize market access and national treatment in specific services sectors.

By the time of the Brussels ministerial meeting, only three "offers" for initial services market access commitments had been tabled, and there had been no discussion or negotiation of commitments. Following the Brussels meeting, the United States has made considerable efforts, in bilateral consultations with several countries, to persuade other governments to table offers and conclude market access agreements in services. There are now 15 offers on the table and more are anticipated. The United States has conducted informal bilateral consultations on all offers to date and more negotiating sessions are scheduled. This is an encouraging and positive development that augers well for the conclusion of a services agreement that meets U.S. negotiating objectives.

c. Market Access for Goods

The United States has made similar efforts bilaterally with other governments to seek improvements and clarifications to market access offers with respect to goods, a key component of the negotiations for the U.S. manufacturing sector. The United States has sought to obtain additional interest and participation in the U.S. private sector-driven reciprocal duty elimination initiatives (referred to as "zero-for-zero proposals.) There is substantial reason to believe that once fully resumed, the negotiations in market access will address many U.S. negotiating objectives. This is discussed in detail in the Annex.

3. Conclusion

As the above discussion suggests, the United States has used the hiatus in the negotiations to consult closely with the U.S. private sector and Congress on the status of the agreements, results of negotiations in Brussels, and subsequent bilateral talks with other governments. These consultations have confirmed the appropriateness of the U.S. resolve, demonstrated at Brussels, to accept nothing short of a comprehensive and truly beneficial Uruguay Round result. The considerable progress made since the Round was launched in 1986 provides ample justification for the continuation of the Round and the extension of fast track procedures.

Success in the Uruguay Round cannot be guaranteed. Nonetheless, the Administration believes that the United States should continue to pursue its trade objectives in the Uruguay Round because a successful Round is overwhelmingly in the long-term economic interests of the United States.

In deciding upon this extension request, Congress will no doubt consider whether long-term U.S. economic and foreign policy interests will be best served by remaining an active participant in the multilateral trading system. The negotiating objectives set forth by Congress in the 1988 Act can only be achieved if we are such a participant. Continuation and successful conclusion of the Uruguay Round are synonymous with a continuation of economic cooperation on trade at the international level. This will require continued U.S. leadership and direction. Failure to extend fast track authority, on the other hand, would signal a serious change in the direction of U.S. policy against multilateral economic cooperation and would be certain to have detrimental consequences that extend well beyond the economic sphere.

B. North American Free-Trade Agreement

The extension of fast track procedures is essential for the United States to take advantage of the opening of the Mexican economy under the leadership of President Carlos Salinas de Gortari and to build upon the opportunities created by our far-reaching FTA with Canada to negotiate a historic North American Free-Trade Agreement.

1. Introduction

Mexico is America's third single largest trading partner, and the United States accounts for over two-thirds of Mexico's total trade. In 1990, two-way trade was roughly $59 billion. The United States exported $28.4 billion to Mexico and imported $30.2 billion from it. Thanks to strong U.S. export growth and Mexico's trade liberalization, since 1986 the U.S. trade deficit with Mexico has fallen from $5 billion to $1.8 billion.

Although Mexico is a key U.S. trading partner, for many years we had basic disagreements over trade policy. Mexican policies were highly interventionist, characterized by trade protection, a restrictive investment environment, a large degree of state ownership and control of business, and an overly regulated business climate.

In the mid-1980's, however, the first signs of change began to appear. Former President de la Madrid began this process and took the major step of Mexican accession to the GATT in 1986.

After President Salinas took office in 1988, the pace of reform quickened and a dramatic change occurred in Mexico's policies. President Salinas has taken a restrictive trade and investment regime and moved it toward becoming one of the most open among developing countries. For example:

- Mexico has cut its top tariff from 100 percent to 20 percent, far below the 50 percent level bound when Mexico joined the GATT. The average trade-weighted tariff has fallen from over 25 percent in the mid-1980's to about 10 percent today.

- Import licenses, which in 1983 controlled all Mexican imports, have been slashed. They now cover only 250 items, or roughly seven percent of the value of U.S. exports to Mexico.

- In May 1989, the Salinas Administration issued new regulations that went a long way toward reforming Mexico's investment rules. Those regulations began the process of opening doors for U.S. and other foreign investors, doors that have been shut for far too long.

- Mexico is in the midst of a major effort to strengthen its protection of intellectual property rights. It has committed to lengthening the patent term to 20 years, extending coverage to such areas as pharmaceuticals and chemicals, and improving protection for trademarks and trade secrets. It has also indicated its intention to address deficiencies in its copyright laws.

- The role of government as an owner/operator of business is being drastically reduced. Of the 1155 enterprises owned by the state in 1982, 801 have been authorized for divestment and 619 have actually been privatized. Major examples include the recently announced decision to privatize the banking system; the sale of Aeromexico and Mexicana airlines; the divestiture, with sale of shares of Telmex, the national telecommunications company, to a group of investors including Southwestern Bell, a U.S. firm; and sales in areas such as insurance, mining, food processing, steel and cement.

All these initiatives demonstrate Mexico's readiness to take bold moves toward trade liberalization to stimulate economic growth.

2. U.S. Trade Policy Toward Mexico

While the impetus for reform has been in Mexico, the United States has not sat idly by. We have encouraged and supported Mexico in its process of reform. The United States and Mexico concluded the "Framework of Principles and Procedures for Consultation Regarding Trade and Investment Relations" in 1987. The "Framework Agreement" established a consultative mechanism to discuss trade issues and resolve trade differences. Under the Framework Agreement, the United States and Mexico have established 10 working groups in five areas: agriculture, investment and intellectual property rights, services, tariffs, and industry.

In October 1989, Presidents Bush and Salinas signed the "Understanding . . . Regarding Trade and Investment Facilitation Talks" (TIFTs). The TIFTs process builds on the 1987 Framework Agreement and establishes a mechanism for possible negotiations on specific issues or sectors. In March 1990, the United States and Mexico agreed that "petrochemicals" and "standards, testing and certification" would be the first areas for negotiation under TIFTs.

In 1989 Mexico was the first country to reach a new debt accord under the Brady Plan. That agreement, which covers over half of Mexico's total external debt, provides substantial debt and debt service relief. The new debt package has bolstered investor confidence in Mexico and has placed Mexico on a firm footing for future growth.

3. Impact of Mexican Reforms on U.S. Exports

Mexico's unilateral reforms, supported by U.S. policies, have helped spur strong trade growth between our two countries.

- U.S. exports to Mexico have more than doubled since 1986, rising from $12.4 billion to $28.4 billion in 1990.
- U.S. agricultural exports have grown from $1 billion to $2.5 billion, while manufactures exports have risen from $10 billion to $22 6 billion. The United States now enjoys a $2.3 billion surplus in trade with Mexico in manufactured goods.

4. Possible Benefits from an FTA

This recent growth in exports to Mexico has meant jobs for U.S. workers and sales for U.S. companies. Through an FTA, the United States and Mexico can consolidate and build on the progress to date and expand opportunities available for U.S. firms and farmers. Further Mexican liberalization on goods, services, and investment will stimulate Mexican growth and increase Mexico's demand for U.S.-produced goods and services.

Consumers on both sides of the border will benefit as increased competition leads to greater efficiency and lower prices for traded goods. For example:

- Mexico still has an average applied tariff of about 10 percent, compared to about 4 percent in the United States. Moreover, although Mexico's top applied tariff rate is 20 percent, it currently has the legal right to unilaterally raise its tariffs to 50 percent, the rate bound under the GATT. An FTA would lock in a schedule to reduce and ultimately eliminate tariffs and other barriers to market access, creating new business opportunities for American exporters.
- In agriculture, a restrictive import licensing system still applies to about 40 percent of the value of U.S. agricultural exports to Mexico, including such commodities as grains, dairy products and certain fruits and vegetables.

Licenses are granted or withheld in an arbitrary manner and often act as import bans. FTA talks could provide an avenue through which these restrictions might be dismantled.

- While Mexico has liberalized its investment regulations, much more could be done. We seek an open, nondiscriminatory investment environment in Mexico, free of performance requirements and investment restrictions that distort trade and investment flows. Investment is an issue we have agreed to address in our FTA negotiations.

- In services, the United States seeks additional openings in many areas, including banking, securities, insurance and transportation. In these areas in particular, market entry is restricted, and in some sectors U.S. firms are totally denied access to the Mexican market. We could use the FTA negotiations to seek needed liberalization in these sectors.

With respect to intellectual property rights, we expect action to begin even before FTA negotiations. In January 1990, Mexico announced a program to overhaul and modernize its patent and trademark regime. While the Salinas Administration introduced a new industrial property law in December 1990, this law was not enacted. Although we were disappointed that the law was not passed in 1990, given the assurances the Administration has received from Mexico, we expect these laws to be enacted soon after the Mexican Congress reconvenes in April 1991. We also have had indications that Mexico will modernize its copyright laws to protect producers of sound recordings and computer software. Mexico must provide effective protection and enforcement of intellectual property rights, with reforms offering immediate commercial benefits to intellectual property rights holders. Embodying intellectual property rights protection in the FTA will make such reforms secure for Americans and Mexicans alike.

In sum, the FTA would reinforce much of the liberalization that Mexico has implemented to date, and would provide avenues for additional liberalization.

Mexico also is important as the cornerstone of a comprehensive Western Hemisphere policy. An FTA would be the first step toward President Bush's longer-term goal of hemispheric free trade, and Mexico's example of market-oriented economic reform is a significant role model for other countries in the region.

Finally, Mexico is a close neighbor and a good friend. There are extensive cultural, historical, family and language ties that link us. Our two Presidents are committed personally to maintaining excellent relations based on mutual respect and cooperation. We have a broad bilateral agenda that goes well beyond trade, economic and investment links. U.S. agencies, including the Environmental Protection Agency and the Departments of Justice, State and Labor, are actively engaged in working with Mexico on such important issues as the environment, narcotics, immigration, human rights and worker standards. By boosting economic prosperity in the United States and Mexico, an FTA would enhance each country's ability to deal with these important issues.

5. Inception and Evolution of an FTA with Mexico

On June 10, 1990, President Bush and Mexico's President Salinas issued a joint statement on the negotiation of a free-trade agreement (FTA) between the United States of America and the United Mexican States. The Presidents endorsed a comprehensive FTA, entailing the gradual and comprehensive elimination of trade barriers between the two countries, including: the full, phased elimination of import tariffs; the elimination or fullest possible reduction of non-tariff trade barriers such as import quotas, licenses and technical barriers to trade; the establishment of clear, binding protection for intellectual property rights; fair and expeditious dispute settlement procedures; and means to improve and expand the flow of goods, services, and investment between the United States and Mexico. The Presidents also reaffirmed their commitment to the multilateral trading system and identified a successful conclusion of the Uruguay Round as their highest trade priority.

The two Presidents directed their respective trade ministers, Ambassador Carla A. Hills, the U.S. Trade Representative, and Dr. Jaime Serra Puche, Mexico's Secretary of Commerce and Industrial Development, to undertake the consultations and preparatory work needed to initiate free trade negotiations. The trade ministers were told to report back to the two Presidents as soon as practicable, but in any event no later than December 1990, when the two Presidents were next scheduled to meet.

Following that announcement, the Administration held a series of meetings with Congress and the private sector, seeking advice on the idea of an FTA with Mexico. These preliminary consultations included discussions with the Senate Finance and House Ways and Means Committees, the Senate Commerce Committee and the House Energy and Commerce Committee, and the Senate and House Agriculture Committees, as well as contacts with various Members and their staffs. Private sector contacts included various Industry Sector Advisory Committees (ISACs), Industry Functional Advisory Committees (IFACs) and Agricultural Technical Advisory Committees (ATACs), as well as the Agriculture Policy Advisory Committee (APAC), the Labor Advisory Committee (LAC), the Investment Policy Advisory Committee (INPAC) and the Inter-Governmental Advisory Committee (IGPAC), and a host of non-advisory body private sector contacts. Although some concerns were expressed about the initiative, there was even greater interest in and support for negotiations.

Following these preliminary consultations, on August 8, 1990, Ambassador Hills and Secretary Serra reported back to the Presidents, pursuant to the June 10 instructions. The trade ministers jointly recommended the initiation of formal negotiations, in accordance with each country's domestic laws, on a comprehensive free-trade agreement. The trade ministers agreed that a free trade agreement should lead to the progressive elimination of impediments to trade in goods and services and to investment, as well as to the protection of intellectual property rights and the establishment of fair and expeditious dispute settlement mechanisms. They also agreed that any accord would be crafted consistent with obligations under the General Agreement on Tariffs and Trade.

Both Presidents welcomed this recommendation, and on August 21, 1990, President Salinas wrote to President Bush proposing that the United States and Mexico negotiate a free-trade agreement, a step required under the fast track procedures (section 1102(c)) of the Omnibus Trade and Competitiveness Act of 1988. On September 25, again in accordance with section 1102 of the 1988 Trade Act, President Bush wrote to the Chairmen of the Senate Finance and House Ways and Means Committees notifying the two Committees of proposed free trade negotiations with Mexico.

In his letter to the Committee chairmen, the President also informed them that the Government of Canada had expressed a desire to participate in the negotiations, with a view to negotiating an agreement or agreements among all three countries. In welcoming this opportunity, the President noted that all three governments would be consulting in the coming months to explore the possibilities for a three-way negotiation, and that the Administration would be discussing the idea with both Committees. The President said he would send a further or revised notice to the Committees as appropriate, depending on the outcome of the consultations.

The President's notification of the two Committees triggered the 60 legislative-day clock, during which time the Committees could review the proposed negotiations with Mexico and, if either Committee so chose, disapprove the application of fast track procedures to any agreement arising out of the negotiations. During this review period, the Administration intensified its consultations with the Congress and the private sector. On February 6 and 20, 1991, the Senate Finance Committee held public hearings on the FTA proposal; the International Trade Subcommittee of the House Ways and Means Committee held similar hearings on February 20 and 21. The 60 legislative-day review period expired on February 27, 1991, without either Committee voting to deny fast track authority for negotiations with Mexico.

6. Beyond Mexico -- a North American Free Trade Agreement

Following the President's September 25 notification on Mexico, a series of meetings were held by officials from the United States, Mexico and Canada with respect to a possible trilateral negotiation. Ambassador Hills met with her Mexican and Canadian counterparts three times, and Ambassador Julius L. Katz, Deputy U.S. Trade Representative, met with his counterparts four times, to consider the issue of a trilateral negotiation. In addition, there were numerous meetings at the staff level to consider various aspects of a negotiation. The Administration also consulted with both the Congress and the private sector to seek advice on whether to proceed trilaterally.

Based on the work done among the governments and domestic consultations, the three governments decided to proceed with trilateral negotiations -- that is, to negotiate a North American Free Trade Area (NAFTA). The President so informed the Chairmen of the Senate Finance and House Ways and Means Committees in writing on February 5, 1991.

An agreement among the United States, Mexico and Canada would be a dramatic move forward. It would create an enormous free trade area, with 360 million producers and consumers and a total output of almost $6 trillion. Eliminating trade and investment barriers and achieving common rules among our countries will harness the energies and talents of three great nations, helping them to meet the global economic challenge. A NAFTA would be a bold step toward establishing free trade in the Western Hemisphere and would create a solid foundation for North American growth and prosperity into the twenty-first century.

Our consultations have shown that all three governments have the will and determination to make these negotiations a success. In considering how a trilateral negotiation might take place, we have agreed that the negotiation will proceed along the same timetable as originally agreed by the United States and Mexico.

Finally, both the United States and Canada agree that the U.S.-Canada Free-Trade Agreement sets a floor for commitments between the two countries. Trilateral negotiations will give us an opportunity to improve and expand the U.S.-Canada free-trade agreement; the negotiations will not be a vehicle for retreating from the trade and investment disciplines or liberalization achieved in the U.S.-Canada FTA.

The time is right to attempt this negotiation. In all three governments, there is a shared vision of a North America freed from barriers to trade and investment, where economic success is based on complementary competitive strengths. A NAFTA would be a catalyst for economic growth and development in North America. All three countries would obtain significant mutual benefits from increased trade, investment flows and jobs. The NAFTA would help strengthen the economy in all three countries and create a firm foundation for future economic growth. Lower trade barriers and faster economic growth in Mexico and Canada will spur U.S. exports and help the U.S. economy expand. Reduced barriers will improve the efficiency and productivity of industries in all three countries, and enhance their competitiveness in the global marketplace.

7. Next Steps

As noted earlier, the 60 legislative day review period for the notification on Mexico expired on February 27. With respect to Canada, we are in the midst of the review period.

Assuming that we clear the 60-day review of the NAFTA initiative and that a request for fast track authority is not disapproved, we would expect formal negotiations to begin some time in the spring of 1991.

As we have been doing since before the joint Presidential announcement last June, we will continue to consult actively with the Congress. As part of this process, we will seek the views of the Senate Finance and House Ways and Means Committees, as well as those of other members of Congress. With the exception of large-scale labor mobility, which has been ruled off the table for the negotiations, we have an open mind on issues surrounding the NAFTA. We welcome the advice of the Congress and will listen closely to it.

We will continue to consult with our advisors from agriculture, industry, and labor, as well as others in the private sector with an interest in any such agreement. We also will consult with state and local governments. The best way to develop a trade agreement that benefits our nation and our people is through a partnership among the Congress, the private sector and the Administration.

8. Conclusion

At no time have the United States, Mexico and Canada jointly shared such a firm commitment to opening markets and expanding trade and investment. We should seize this opportunity and build a firm foundation for growth throughout North America into the twenty-first century. Without the significant advantages of fast track procedures, described in the Foreword above, the practical impediments to negotiating an agreement would be all but insurmountable. The Administration looks forward to working with the Congress as we seize this opportunity and turn it into the reality of free trade in North America.

C. Enterprise for the Americas

The extension of fast track procedures would also permit the President to pursue trade agreements in the next two years with one or perhaps more Latin American nations under the Enterprise for the Americas Initiative.

1. Introduction and Overview

The Enterprise for the Americas Initiative ("EAI") was announced by President Bush in a major address on June 27, 1990. The President premised his Initiative on the tremendous political and economic changes taking place in the Western Hemisphere, where there is a new commitment to the ideals of democracy and reliance upon market forces in the pursuance of economic reform designed to boost economic growth.

The President's speech laid out a comprehensive new policy for the Hemisphere with trade, investment, debt and environmental elements, an Initiative he named "Enterprise for the Americas." The fundamental objective of the Initiative is faster economic growth for all the participating countries, including the United States.

There was an immediate positive reaction to the EAI on the part of the leaders of Latin America. This response is indicative of the new emphasis on trade liberalization and open markets in all the major Latin American and Caribbean countries. This attitude presents new opportunities for opening long-closed markets and achieving significant investment climate improvements in the context of reciprocal negotiations.

2. Trade Aspects of the EAI

The trade aspects of the Initiative are linked to its other components. Trade liberalization in the Hemisphere and in the world trading system will lead to greater investment opportunities in the region's economies. Progress on the debt problem will also improve the business climate and affect growth.

In his speech, the President proposed three mutually-reinforcing means by which to liberalize trade in the Hemisphere:

- First, he called on the countries of the region to work with us to secure a successful outcome to the Uruguay Round of trade negotiations, and promised to offer deeper tariff reductions on items of interest to countries of the region.

- Second, he set out the long-term goal of a free trade zone stretching from Alaska to Tierra del Fuego and announced a willingness to enter into free trade agreements with other markets in the region, particularly with groups of countries associated for the purposes of trade liberalization. He indicated he considered the proposed negotiation of a free trade agreement with Mexico to be the first step in this process.

- Third, he proposed that interested countries negotiate "framework agreements" with the United States to begin trade liberalization.

These goals are consistent with the bilateral and multilateral negotiating objectives for the United States laid out in section 1101 of the 1988 Trade Act.

3. Progress Made on the Initiative

The U.S. Government has been working within the framework of the Initiative to explore possibilities for trade liberalization in the hemisphere. In order to advance trade and investment liberalization, the United States is negotiating a network of "Framework Agreements on Trade and Investment" to lay the groundwork for such bilateral and plurilateral trade agreement negotiations as may be decided upon, and to facilitate close cooperation in pursuit of our common goals in the GATT negotiations.

Following the development of a prototype framework agreement in July 1990 (based on then existing trade and investment framework agreements with Mexico and Bolivia), the United States proceeded to negotiate and sign similar consultative agreements with five countries: Colombia, Ecuador, Chile, Honduras and Costa Rica. Framework agreements are also under active negotiation with Venezuela, Peru, Jamaica and Nicaragua, as well as the countries of the emerging Southern Cone Common Market (Brazil, Argentina, Uruguay and Paraguay) as a group.

4. Conclusion

The completion of a framework agreement with a country or group of countries does not necessarily mean the United States will be proposing free trade negotiations with such countries immediately. Many countries are not ready politically or economically for such a relationship. But framework agreements will enable us to move forward on a step-by-step basis to eliminate counterproductive barriers to trade in line with our ultimate goal of free trade. The availability of fast track procedures for free trade agreements negotiated with Latin American countries will encourage reform and liberalization in Latin America and will further the objectives of the EAI. While

Chile could be a candidate for the negotiation of a free trade agreement within the period of fast track extension, few, if any, other Latin American countries would be ready to negotiate free trade agreements with the United States within this time frame.

III. CONCLUSION AND REQUEST FOR EXTENSION

For the better part of this century, the Congress and the Executive Branch have recognized that the negotiation and implementation of trade agreements require special cooperation between the two Branches. Fast track procedures reflect a special accommodation and partnership between the Congress and the Executive essential for the pursuit and achievement of U.S. trade policy objectives.

We find ourselves today engaged in bilateral and multilateral trade initiatives that hold unprecedented promise for the achievement of those objectives. With such initiatives in the balance, now is not the time to dissolve a partnership which has endured for almost sixty years.

Maintaining fast track procedures will keep on course our joint efforts to liberalize trade and open markets through the GATT, through other multilateral agreements, and through bilateral agreements. No country has more to gain from the success of those efforts than the United States. As we approach the beginning of a new century, we should not hesitate to pursue the opportunities for economic growth and prosperity presented by the initiatives described in this report. In order to turn those opportunities into realities, the Congress and the Executive must continue to work together in the manner envisioned by the fast track.

Accordingly, pursuant to section 1103(b)(1)(B) and (b)(2) of the Omnibus Trade and Competitiveness Act of 1988, the President hereby requests that the fast track procedures set forth in section 151 of the Trade Act of 1974, as amended, and as incorporated in section 1103 of the 1988 Act, be extended to implementing bills submitted with respect to trade agreements entered into after May 31, 1991, and before June 1, 1993.

CHRONOLOGY OF KEY URUGUAY ROUND DEVELOPMENTS

March 1984	Informal Trade Ministers Meeting held in Washington, DC to discuss a new round of multilateral negotiations.
September 1984	Informal Trade Ministers Meeting held in Rio de Janeiro, Brazil to continue discussions on a new round of multilateral negotiations.
March 1985	Informal Trade Ministers Meeting held in Ludwigsburg, FRG to continue discussions on a new round of multilateral negotiations, co-hosted by London Trade Policy Research Centre.
June 1985	Informal Trade Ministers Meeting held in Stockholm, Sweden to shape the agenda for a new round of multilateral negotiations.
July 24, 1985	United States invoked the unprecedented procedure of calling for a vote to convene a special session of GATT contracting parties, to examine "subject matter and modalities" of proposed new round.
November 29, 1985	The GATT established a Preparatory Committee to determine objectives, subject matter, modalities for and participation in multilateral negotiations and called for a ministerial meeting in September 1986 to adopt a program for a new round of multilateral trade negotiations.
January 27-July 31, 1986	Preparatory Committee held 9 formal and numerous informal meetings, discussing more than 30 subjects for possible inclusion in a new round of negotiations.
February 4, 1986	President Reagan announced in the State of the Union Address that the United States would accelerate efforts to launch a new GATT negotiating round.

May 1986	Informal Trade Ministers Meeting held in Seoul, Korea to refine the agenda for a new round of multilateral negotiations.
September 15-20, 1986	Ministerial-level meeting in Punta del Este, Uruguay officially launched 8th Round of Multilateral Trade Negotiations under the auspices of the GATT for a period of four years.
September 25, 1986	USTR Clayton Yeutter testified before the House Ways and Means Committee on the launching of the Uruguay Round.
January 28, 1987	Participants agreed to a structure for the conduct of negotiations and negotiating plans. Fifteen negotiating groups were established and chairmen appointed in order to implement Ministerial mandate.
February 1987	Negotiating Groups began first cycle of negotiating meetings.
February 10, 1987	USTR Yeutter testified before the House Ways and Means Committee on developments in the Uruguay Round.
March 1987	Informal Trade Ministers Meeting held in Taupo, New Zealand to discuss the Uruguay Round and assuring conclusion by 1990; discussed idea of Mid-Term Review to check progress.
March 31, 1987	USTR Yeutter testified before the Senate Agriculture Committee on the Uruguay Round.
June 9, 1987	United States tabled paper "Identifying TRIMs [trade-related investment measures] and their relation to GATT Articles". (MTN.GNG/NG12/W/4)

May 21-23, 1987	Cairns Group of agricultural exporting countries ministerial meeting held in Ottawa, Canada. Ministers endorsed an "early harvest" or Mid-Term Package in the Uruguay Round.
July 8, 1987	United States tabled "Proposal for Negotiations on Agriculture". (MTN.GNG/NG5/W/14)
July 30, 1987	USTR Yeutter testified before the Senate Finance Committees concerning developments in the Uruguay Round.
October 28, 1987	United States tabled "Framework Proposal on Intellectual Property". (MTN.GNG/NG11/W/14)
November 4, 1987	United States tabled "Concepts for a Framework Agreement on Trade in Services". (MTN.GNS/W/24)
December 9, 1987	United States submitted "Preliminary Ideas on a Safeguards Agreement". (MTN.GNG/NG9/W/12)
January 1988	Advisory Committee for Trade Policy and Negotiations (ACTPN) met in Geneva to assess progress in the Round and to meet with foreign negotiators.
February 14, 1988	Results of the first phase of the renegotiations of the Government Procurement Code, are implemented, strengthening the disciplines of the Code.
February 16, 1988	USTR Yeutter testified before the House Foreign Affairs Committee on the Round.
February 18, 1988	United States tabled proposals in Standards Code Negotiations on "Procedures for Issuing Product Approval" (MTN.GNG/NG8/W/23) and "Processes and Production Methods" (MTN.GNG/NG8/W/24).

March 1988	Informal Trade Ministers Meeting held in Lake Konstanz, Germany, to discuss the Uruguay Round and goals for the Mid-Term Review.
March 9, 1988	Trade Negotiations Committee, under the chairmanship of GATT Director-General Dunkel, agreed to hold Uruguay Round Mid-term Review at Montreal on December 5, 1988. (MTN.TNC/5)
May 31, 1988	United States tabled "Study on Applying Trade Policy Concepts to TRIMs". (MTN.GNG/NG12/W/11)
April 1988	Agricultural Policy Advisory Committee (APAC), along with Congressional delegation, met in Geneva to assess agriculture negotiations in the Uruguay Round.
June 15, 1988	United States tabled "Initial Proposal for Greater Disciplines on Subsidies". (MTN.GNG/NG10/W/20)
July 1988	USTR Yeutter requested the ITC to prepare a three-part study of trade in services. The study was to include a summary profile of eleven domestic service sectors, identification of U.S. state and federal measures which may impede foreign participation in the U.S. market, and a summary profile of certain service sectors in foreign countries.
July 11-12, 1988	Services Policy Advisory Committee (SPAC) met in Geneva to assess developments in the Uruguay Round, the negotiations on services and positions of foreign delegations.
August 23, 1988	Negotiating objectives and "fast track" procedures authority enacted in the Omnibus Trade and Competitiveness Act of 1988.

August 26, 1988	United States tabled proposals in Standards Code Negotiations on "Improved Transparency in Standards - Related Agreements" (MTN.GNG/NG8/W/34) and "Improved Transparency in Regional Standards Activities". (MTN.GSG/NG8/W/35).
September 1988	Informal Trade Ministers Meeting held in Islamabad, Pakistan, to discuss the Uruguay Round and agreements for the Mid-Term Review.
October 17, 1988	United States tabled "Suggestions for Achieving the Negotiating Objectives on TRIPs" (a submission to develop a comprehensive agreement on TRIPs [trade-related intellectual property] that encompasses substantive protection and standards for patents, trademarks, copyrights, semiconductor chip mask works and trade secrets.) (MTN.GNG/NG11/W/14/Rev.1)
November 9, 1988	United States tabled "A Framework for Agricultural Reform" which elaborated U.S. agricultural position and introduced concept of tariffication. (MTN.GNG/NG5/W/83)
December 5-9, 1988	Mid-Term Review (MTR) Ministerial held in Montreal. Specific framework agreements reached in all areas except agriculture, TRIPs, textiles and safeguards. All results agreed at MTR put "on-hold" pending resolution of outstanding agreements.
December 22, 1988	President requested advice from the International Trade Commission (ITC) on the probable economic effects of trade liberalization on U.S. industries and consumers. This request was required under section 131 of the Trade Act of 1974, as amended.
January-April 1988	GATT Director-General pursued informal consultations, including within Trade Negotiations Committee (TNC), to resolve outstanding issues from MTR and to resume Uruguay Round negotiations.

March 17-19, 1989 Cairns Group Ministerial met in Waitangi, New Zealand, to access developments in agricultural negotiations since the MTR.

April 9, 1989 Agreement reached in four unresolved areas from Montreal enabling Uruguay Round negotiations to reconvene. The April TNC Agreement (MTN.TNC/11) agreements included:

- agreement on the conduct of the remainder of the negotiations, including framework agreements in all areas; and
- agreement on the long-term objective of the Agricultural Negotiations: "to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets."
- 1988-1990 standstill commitments in agriculture not to increase "domestic and export support and protection levels."
- agreement to liberalize trade in tropical products. (MTN.GNG/17 and ADD.1)
- interim agreement and provisional implementation of improvements to the GATT Dispute Settlement rules and procedures to be applied on a trial basis from May 1, 1989 until the end of the Round. (MTN.GNG/NG13/W/4/Rev.1)
- interim agreement to establish the Trade Policy Review Mechanism (TPRM) to increase surveillance on the trade policies of Contracting Parties.

April 11, 1989 USTR Carla Hills testified before the House Ways and Means Trade Subcommittee on the results of the Mid-Term Review and progress in the Uruguay Round.

April 19, 1989	USTR Hills testified before the Senate Finance Committee on the results of the Mid-Term Review and progress in the Uruguay Round.
May 16-17, 1989	Trade Policy Staff Committee conducted public hearings on composition of U.S. tariff and non-tariff request.
June 13, 1989	United States tabled "Elements of a Safeguards Agreement" in the Negotiating Group on Safeguards. (MTN.GNG/NG9/W/23)
July 7, 1989	United States tabled "A Structure for Negotiating a Comprehensive Agreement on Trade-Related Investment Measures". (MTN.GNG/NG12/W/15)
July 10, 1989	United States submitted "Discussion Paper on Tariffication" in the Agriculture negotiating group. (MTN.GNG/NG5/W/97)
July 18, 1989	United States forwarded first product-specific request lists for liberalization of tariff and non-tariff measures to fourteen countries.
September 12, 1989	Investment Policy Advisory Committee (INPAC) met in Geneva to assess the Uruguay Round and developments in achieving an agreement on TRIMs.
September 20, 1989	USTR requested the ITC to study the competitive and economic factors of, and to calculate tariff equivalents for, U.S. import quotas on agricultural products imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended, and voluntary restraint agreements on agricultural products.

September 27, 1989	United States tabled "Proposal on Rules of Origin" in Negotiating Group on Non-Tariff Measures. (MTN.GNG/NG2/W43) United States and Hong Kong tabled "Agreement on Import Licensing Procedures", a joint proposal to improve the Import Licensing Code in the Negotiating Group on MTN Agreements and Arrangements. (MTN.GNG/NG8/W/5[illegible])
October 13, 1989	United States tabled proposal on state trading (Article XVII) in the GATT Articles Negotiating Group. (MTN.GNG/NG7/W/55)
October 16, 1989	United Stated tabled proposal in GATT Articles Negotiating Group to permit the imposition of a small import fee to fund trade adjustment programs, pursuant to section 1428 of the 1988 Trade Act. (MTN.GNG/NG7/W/57)
October 23, 1989	United States tabled "Draft Framework Agreement on Services." (MTN.GNS/W/75)
October 25, 1989	United States tabled "Submission on Comprehensive Long-term Agricultural Reform" to the Negotiating Group covering market access, domestic support, export subsidies and sanitary and phytosanitary issues. (MTN.GNG/NG5/W/118)
October 31-November 3, 1989	Trade Policy Staff Committee conducted public hearings on composition of U.S. tariff and non-tariff measures offer.
November 1989	Informal Trade Ministers Meeting held in Tokyo, Japan to discuss the Uruguay Round; particularly the impasse on market access in light of the differences in approaches used by participants.

November 16, 1989	United States tabled "Proposal to Reform of the GATT Balance of Payments Disciplines" to the GATT Articles Negotiating Group. (MTN.GNG/NG7/W/58)
November 22, 1989	United States tabled "Elements of the Framework for Negotiations on Subsidies" aimed at strengthening the current discipline on the use of subsidies and providing adequate mechanisms to enforce that discipline. (MTN.GNG/NG10/W/29)
November 24, 1989	United States submitted proposal in Standards Code Negotiations on Systems for the Accreditation or Approval of Testing Laboratories, Inspection or Quality Systems Registration Bodies. (MTN.GNG/NG8/W/60).
Dec. 12-14, 1989	The trade policies of the United States, Australia, and Morocco were examined in the First Review Session of the TPRM.
December 14, 1989	U.S. submitted proposal on possible modalities which would permit the eventual integration of the textile and clothing sector into the GATT on the basis of strengthened rules and disciplines. (MTN.GNG/NG4/W/33)
January 23, 1990	United States tabled proposal on Pre-shipment Inspection in the Negotiating Group on Non-Tariff Measures. (MTN.GNG/NG2/W/53)
January 24, 1990	United States tabled draft legal text for an agreement on TRIMs. (MTN.GNG/NG12/W/24)
January 29-30, 1990	The Chairs of the Industry Sector and Functional Advisory Committees (ISACs and IFACs) visited Geneva to assess developments in the Round.

February 1, 1990	TNC reached agreement on market access procedures requiring each participant to provide the Secretariat with a proposal for the reduction, elimination and binding of its respective tariffs by March 15, 1990. (MTN.GNG/NG2/15)
February 5, 1990	U.S. submitted more detailed proposal on alternative modalities that would permit the integration of the textile and clothing sector into the GATT. (MTN.GNG/NG4/W/37).
March 2, 1990	USTR Hills testified before the House Ways and Means Committee on the Uruguay Round. U.S. submitted proposal in Textiles and Clothing Negotiating Group which further elaborated U.S. views on how a global quota system would operate. (MTN.GNG/NG4/W/43)
March 15, 1990	United States tabled proposal in Market Access Negotiations pursuant to TNC agreement.
March 24, 1990	USTR requested the ITC to study the tariff equivalents of non-tariff barriers to certain agricultural imports in the European Community, Japan and Canada.
April 4-7, 1990	Labor Advisory Committee met in Geneva to assess developments in the Round and review labor's particular interests with foreign negotiators.
April 6, 1990	United States circulated discussion paper on options for improving GATT Dispute Settlement. (MTN.GNG/NG13/W/40).
April 18-20, 1990	Informal Trade Ministers Meeting held in Puerto Vallarta, Mexico, to discuss the Uruguay Round. Discussions focused on the lack of progress in key areas.

May 1, 1990	USTR Hills testified before the Senate Finance Committee on a range of trade subjects, including the Uruguay Round.
May 4, 1990	USTR Hills requested ITC to expand on its previous study which identifies and analyzes U.S. state measures which may not be in conformity with the principles to govern trade in services which the U.S. was proposing in the Uruguay Round.
May 11, 1990	United States tabled draft legal text of an agreement on TRIPs. (MTN.GNG/NG11/W/70)
May 14, 1990	U.S. submitted comprehensive proposal concerning modalities for phasing out MFA restrictions, strengthened GATT rules and disciplines, and safeguard mechanisms in the Negotiating Group on Textiles and Clothing. (MTN.GNG/NG4/W/46)
May/June 1990	First intensive round of bilateral negotiations on market access for goods began in Geneva.
June 5-7, 1990	Trade policies of Sweden and Colombia were examined in the Second Review Session of the TPRM.
June 15, 1990	United States and Canada submitted joint proposal for Balance of Payments Reform to GATT Articles Negotiating Group. (MTN.GNG/NG7/W/72).
June 1990	United States submitted bilateral request lists on services to 40 countries.
July 1990	Agriculture Negotiating Group Chairman deZeeuw tabled his "Framework Agreement on Agricultural Reform Programme, Draft Text by the Chairman". (MTN.GNG/NG5/W/170).

July 9-11, 1990	At Houston Economic Summit, Heads of State committed their personal involvement to the successful conclusion of the negotiations, and agreed to use the deZeeuw text as a means to intensify the agriculture negotiations.
July 16-17, 1990	Chairman of the Industry Sector Advisory Committees (ISACs) made a second visit to Geneva to study developments in the Uruguay Round.
Jul. 30- Aug. 3, 1990	Trade policies of Japan, Canada, Hong Kong and New Zealand were examined in the Third Review Session of the TPRM.
August 31, 1990	United States tabled proposal on Article XXXV (Non-application of GATT benefits) to the Negotiating Group on GATT Articles. (MTN.GNG/NG7/W/74).
September 1990	United States, EC and other Signatories submitted offers for expanding the coverage of the Government Procurement Code to telecommunications and electrical entities, services contracts, and for improving the enforcement mechanisms of the Code.
September 16, 1990	Advisory Committee for Trade Policy and Negotiations (ACTPN) and Policy Advisory Committee Chairmen met in Geneva to assess progress in the Uruguay Round.
October 2, 1990	USTR Hills testified before the House Energy and Commerce Committee on the Uruguay Round.

October 15, 1990	Deadline for submitting all "offers", including in market access and agriculture. United States submitted an elaboration of its agricultural proposal pursuant to MTN.TNC/15. Cairns Group countries (except Canada) tabled their proposal for reform of world agricultural trade. Like the U.S. proposal, the Cairns Group proposal was multilateral in nature and closely followed Chairman de Zeeuw's July text.
October 27, 1990	United States submitted comprehensive "offer" for market access negotiations addressing tariffs and non-tariff measures and including the zero/zero initiatives.
October 31, 1990	United States tabled "Additional Proposals on Safeguards". (MTN.GNG/NG9/W/31). United States tabled proposal on steel trade covering rules and disciplines on subsidies, market access and dispute settlement for the steel sector. (MTN.GNG/W/23).
November 4-5, 1990	Cairns Group had its eighth Ministerial meeting in Geneva. Ministers blamed the blockage in agriculture on the EC and called on the EC to submit its agricultural offer immediately.
November 7, 1990	European Community tabled its agriculture proposal.[1]
November 13, 1990	United States submitted "Conditional Offer Concerning Initial Commitments in the Negotiating Group on Services". (MTN.GNS/W/112).

---

[1] This chronology for the most part includes reference only to submissions and other proposals tabled by the United States, since the hundreds of proposals submitted by other delegations are too numerous to include. The EC agriculture offer, however, is included because it marked a significant stage in the negotiations.

December 3-7, 1990	TNC Ministerial meeting in Brussels ended without result because of inability to reach agreement on a framework for agricultural reform. GATT Director-General instructed to consult in order to break deadlock.
January 1991	Services market access bilateral negotiations began on basis of proposals submitted.
January 15, 1991	Informal meeting of the TNC held to take stock of the situation since the Brussels Ministerial. GATT Director-General Dunkel reported on his consultations with various contracting parties and concluded that there was "no basis" yet for resuming the formal negotiations.
January-February 1991	United States demarches made in principal capitals to focus on key market access issues, with particular emphasis on pursuing participation in zero/zero initiatives, and growing interest expressed by trading partners.
February 1991	Fifteen countries had services offers on the table with additional offers being prepared; bilateral consultations held in Geneva.

ANNEX

(48)

PROGRESS MADE IN URUGUAY ROUND NEGOTIATIONS

CHAPTER 1: MARKET ACCESS

Tariffs and Non-Tariff Measures.................... 1
Natural Resource-Based Products.................... 6
Steel.. 6
Tropical Products.................................. 7
Textiles and Apparel............................... 8
Other Non-Tariff Measures
  Preshipment Inspection...........................10
  Rules of Origin..................................11

CHAPTER 2: STRENGTHENING GATT RULES AND THE GATT AS AN INSTITUTION

Trade Rules Reform
  GATT Articles....................................14
  Safeguards.......................................17
  Subsidies and Countervailing Measures............18
  Antidumping......................................21
  Other MTN Agreements and Arrangements:
  Technical Barriers to Trade (Standards)..........23
  Customs Valuation................................25
  Import Licensing.................................25
  Government Procurement...........................26
Institutional Reform
  Dispute Settlement...............................28
  Functioning of the GATT System...................30
  Commitments to Standstill and Rollback...........31

CHAPTER 3: AGRICULTURE

Agricultural Reform................................33
Sanitary and Phytosanitary Measures................41

CHAPTER 4: NEW ISSUES

Trade-Related Aspects of Intellectual Property (TRIPs)...44
Trade-Related Investment Measures (TRIMs).........49
Services...51

CHAPTER 5: IMPLEMENTING THE URUGUAY ROUND RESULTS......59

CHAPTER 6: OTHER ISSUES

Worker Rights......................................62
Import Fee for Adjustment Assistance...............64

TABLES AND BACKGROUND DOCUMENTS.......................65

CHAPTER 1

MARKET ACCESS

Among the overall U.S. Trade negotiating objectives set forth in section 1101 of the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") are to obtain (1) more open, equitable, and reciprocal market access; and (2) the reduction or elimination of barriers and other trade-distorting policies and practices. The Act provides that a principal objective is to obtain competitive opportunities for U.S. exports in foreign markets substantially equivalent to the competitive opportunities afforded foreign exports to U.S. markets, including the reduction or elimination of specific tariff and non-tariff barriers. Particular emphasis also is given to reduction or elimination of trade barriers identified in the National Trade Estimate Report, and of barriers on competitive U.S. exports when like or similar foreign products enter the United States duty-free or at low rates of duty.[1]

This chapter describes efforts made to date by U.S. negotiators to meet these objectives. Pursuant to the negotiating mandate established at Punta del Este, Uruguay Round market access negotiating groups were established for tariffs, non-tariff measures, natural resource-based products, textiles and clothing, and tropical products. As is noted below, U.S. efforts cut across many of these negotiating groups.

Tariffs and Non-Tariff Measures

The U.S. objective in the market access negotiations is to reduce (and eliminate where possible) tariff and non-tariff measures affecting U.S. exports. We have worked closely with our private sector advisors to identify key U.S. product-specific priorities in foreign markets and to define the concessions which the United States would offer its trading partners to attain the desired access to their markets.

Based on private sector advice, the United States proceeded in the market access negotiations using a "request/offer" approach. Under this procedure, the United States presented other participating countries with requests for tariff and non-tariff measure liberalization on products of interest to U.S. exporters. The United States presented over 15,000 product-specific requests to nearly 40 countries in the course of the negotiations.

---

[1] Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-48, §1101, 102 Stat. 1121-25.

This decision to use a "request/offer" procedure, however, led to extensive controversy in the Negotiating Group on Tariffs. Most countries favored a "formula" approach and attempted for more than three years to prevent the use of any other negotiating procedure. The proponents of a "formula" approach contended that formula-based negotiations would lead to a more comprehensive and balanced result, as roughly equivalent tariff reductions would be spread evenly over each country's tariff schedule. (This argument only applies if countries make no exceptions in the products covered by their respective negotiating formulas. As a practical matter, participants in the negotiations were not prepared to accept identical product coverage for a formula-based approach. Also, most formula approaches do not result in the elimination of duties.)

At the Montreal Mid-term Review in December 1988, participants agreed on a negotiating framework that focused not on procedures but on the objectives which participants would aim to achieve in the negotiations. These objectives were:

> A substantial reduction or, as appropriate, elimination of tariffs by all participants with a view to achieving lower and more uniform rates, including the reduction or elimination of high tariffs, tariff peaks, tariff escalation and low tariffs, with a target amount for overall reductions at least as ambitious as that achieved by the formula participants in the Tokyo Round.[2]

The United States interpreted this as a quantitative commitment by all participants to achieve a one-third reduction in their average trade-weighted tariff. It was also agreed that the negotiations should result in a "substantial increase" in the scope of tariff "bindings"[3] among participants and a "substantial" reduction in non-tariff measures.

Adoption of this text allowed the tariff negotiations to move forward. However, formula countries continued debate during 1989 over methodology ("request/offer" versus "formula"). There also was debate on how to reflect concessions on agricultural products, the staging and implementation of concessions and other procedural points, and the provision of special and differential treatment for developing countries.

---

[2] MTN.TNC/11 at page 4. See Attachment C.

[3] GATT Article II provides that signatories may "bind" tariff rates by including them in schedules appended to the GATT. Once a duty is "bound," it may not be raised beyond that bound level without compensating affected parties.

The U.S. Integrated Approach

While the debate in Geneva continued, the U.S. negotiators were preparing the U.S. list of specific tariff and non-tariff measure concessions to be sought from foreign countries. Preparation of that list was done with the valuable assistance of the U.S. private sector advisory committees and after holding public hearings and soliciting public comment. U.S. negotiators proceeded in the negotiations on an "integrated" basis, requesting the elimination of product-specific tariff and non-tariff measures. This approach should result in the most meaningful access to markets and make clear the intention of the United States to consider the results on both tariffs and non-tariff measures when evaluating the overall acceptability of the agreements.

The United States continues to seek the binding of tariff concessions and, for the first time, is requesting that countries bind non-tariff measure concessions. In addition to traditional tariff bindings and across-the-board bindings at "ceiling levels" by developing countries, we are seeking commitments from countries not to reintroduce non-tariff measures (NTMs) they have agreed to reduce or eliminate. The United States tabled a proposal in September 1990 on NTM bindings, which received some support. At the Brussels ministerial meeting, the GATT Secretariat issued a draft market access protocol which contains language on NTM bindings. This language was accepted by most delegations, including the United States.

Initial U.S. product-specific request lists were forwarded to major U.S. trading partners in July 1989. Additional request lists were developed and submitted to other governments through July 1990. These were continually reviewed by the Trade Policy Staff Committee (TPSC) and revised and updated to reflect private sector advice received. Before submission to other governments, all lists were reviewed by the U.S. private sector advisors.

Due to a continuing lack of consensus in the negotiating group on procedural points, other trading partners did not enter into substantive product-specific negotiations with the United States in 1989. The procedural deadlock was broken in January 1990, when it was agreed that all participants would submit their offers to the GATT Secretariat by March 15. The United States agreed with other major trading partners to begin detailed, product-specific bilateral negotiations in June 1990.

Recognizing that time had been lost on procedural issues prior to 1990, the GATT Secretariat urged participants to negotiate "intensively" on substantive requests and offers for the next several months. The United States negotiated bilaterally through July 1990 with each of the nearly 40 countries to which request lists had been submitted. After a brief hiatus during August, bilateral discussions resumed with most countries in September and continued until just prior to the ministerial meeting in Brussels.

The U.S. offer submitted in March 1990 was comprehensive, representing the wide range of product-specific interests of the United States. A major portion of the U.S. offer submitted in March 1990 was devoted to sectoral duty-elimination proposals proposed by the respective domestic industries. Under this "zero for zero" approach, the United States proposed to eliminate all tariffs and non-tariff measures in a given sector if a sufficient number of trading partners reciprocated. Each of these proposals was developed through the private sector advisory committees. As this approach differed from traditional product-by-product GATT negotiating practice, our trading partners were slow to react to this novel concept. The sectors proposed for such treatment included pharmaceuticals and selected chemicals, beer, distilled spirits, furniture, toys, wood, paper, bicycle parts, construction equipment, aluminum and certain lead, copper and zinc products, electronics (including semiconductors, medical equipment, and computer and computer equipment) and steel.[4]

By September, U.S. negotiators began receiving concrete expressions of interest in U.S. sectoral proposals from a number of countries. Some countries remained skeptical, however, and called for application of a formula-type negotiating approach first, before sectorally-based negotiations could be agreed.

In October 1990, the GATT Secretariat urged all participants to submit their "final" offers. The United States took advantage of this second submission, in light of ambitious U.S. objectives under the "zero for zero" approach, to augment its offer substantially to accommodate the formula negotiating approaches adopted by other key participants.

Other countries' offers constructed on a formula basis usually approximated a one-third cut in the average tariff on industrial products. Thus, agreement to the U.S. "zero for zero" proposals would require them to exceed the market access target. As a result, our October 1990 market access offer represented nearly a 40 percent reduction in the U.S. trade-weighted average tariff. The revised U.S. offer was reviewed by U.S. private sector advisors and reflected their concerns. The October U.S. offer was comprehensive. It included possible non-tariff measure concessions and reductions on the full range of products (including agriculture) in the U.S. tariff schedule. (See Table 4 for an analysis of the offers submitted).

---

[4] Beer, distilled spirits and certain electronics were added to the "zero for zero" initiatives in October 1990.

The formation of the Zero Tariff Coalition, a private sector group representing over 130 U.S. companies supporting the "zero for zero" sectoral approach, led to a significant expansion of the sectors (or portions thereof) proposed for "zero for zero" treatment.

During November 1990, U.S. negotiators actively promoted the "zero for zero" proposals and assessed other countries' reactions. Plurilateral meetings were held in Geneva to promote the various sectoral proposals and to answer other delegations' questions about each sectoral package. As the Brussels ministerial meeting neared, U.S. negotiators identified sectors which had garnered the most plurilateral support and stood the best chance of success in the negotiations. It was decided to seek agreement on nine sectors at the Brussels meeting: beer, fish, construction equipment, electronics, pharmaceuticals, paper, wood, non-ferrous metals (encompassing aluminum, copper, lead and zinc), and steel.

The Brussels meeting resulted in an agreement on pharmaceuticals (with a number of technical details still to be developed). Major progress was also made with several developing countries on the "zero for zero" proposals.

Since the Brussels meeting, U.S. negotiators have pursued consultations with various delegations on the positions they took at Brussels, including interests in the "zero for zero" approach. They have also urged private sector advisors to promote with their overseas counterparts the U.S. "zero for zero" objectives. These efforts appear to be bearing fruit in a number of the nine sectors. Additionally, the United States has kept the other market access priorities high on the agenda in talks with other participants.

Delegations were unwilling during January 1991 to take positions on market access initiatives until the formal negotiations resumed. With the resumption of negotiations delegations are expected to take definitive positions on the U.S. sectoral proposals and the United States will then be able to assess the likelihood of success in the nine "zero for zero" sectors. If it is not possible to reach agreement on "zero for zero" in many. sectors the United States will re-evaluate the overall level of its offer. Another aspect of that evaluation, in addition to the important "zero for zero" items, will include the success that the United States has achieved in addressing its product-specific market access priorities identified by the private sector.

Natural Resource-Based Products

The negotiating structure established after Punta del Este provided for a negotiating group on Natural Resource-Based Products (NRBP). This group was to build upon earlier GATT work in the non-ferrous metals, fishery and forestry areas and other interests raised by participants. Since the beginning of the Round the work of the NRBP group has overlapped with negotiations in other areas. The United States has promoted its interests in natural resource-based products in various ways, primarily in the market access request/offer process, including through several of the sectoral "zero for zero" initiatives. Additionally, the United States has sought to focus attention on the continuing problems of government subsidies in the energy-based sectors. Given the variety of barriers and trade distorting measures affecting natural resource-based products, the United States suggested that the NRBP negotiating group monitor and facilitate negotiations in other areas to ensure that the barriers to NRBPs are addressed in the Round, rather than pursue autonomous negotiations. Improvements related to natural resource-based products will be incorporated in the integrated market access package, and well as in the various agreements on rules.

Steel

Steel is one of the products for which we have proposed the "zero for zero" approach. The United States also has proposed within the Uruguay Round a multilateral agreement to eliminate tariffs, non-tariff barriers, and subsidies to steel industries, and to provide an effective dispute settlement procedure based on binding arbitration. The proposed multilateral agreement is based on the bilateral agreements concluded by the United States in 1989 with the European Community, Japan, Korea, Mexico, Brazil, Australia, Austria, Finland, Yugoslavia, and Trinidad and Tobago.

Negotiations on a multilateral agreement on steel have been conducted primarily in informal meetings with interested Uruguay Round participants: the EC, Japan, Korea, Brazil, Mexico, Sweden, Australia, Canada, Austria, Finland, Yugoslavia, and Argentina. The U.S. delegation to the Brussels ministerial meeting continued efforts to build a consensus among all countries for an overall agreement. Further progress is required before all elements of the package will be in place. Participants have not yet decided whether a multilateral agreement on steel should consist of a separate agreement, or individual agreements/protocols to the relevant Uruguay Round agreements. Although the form of the agreement has not been determined, trade liberalization in the steel sector is viewed as a comprehensive package that includes all trade-distorting measures affecting the sector: subsidies, tariffs, non-tariff barriers, and officially supported export credits for steel plant and equipment.

Tropical Products

The developing countries have sought substantial liberalization of market access barriers on tropical products in the Uruguay Round negotiations.[5] Prior to the Uruguay Round, tropical products had been the subject of a GATT work program in which a partial analytical base for these negotiations was established. In the Punta del Este declaration, tropical products are noted as a priority. Since the inception of the Uruguay Round, developing countries have stated their intention to use progress achieved in the tropical products negotiations as a litmus test of industrialized countries' concern for developing countries' interests in the Round. Developing countries continue to seek expedited implementation of concessions on tropical products.

The United States supports substantial liberalization of trade in tropical products by all participants. Further market access liberalization in tropical products beyond what has already been accomplished depends on a successful outcome in agriculture and other market access negotiations.

At the Mid-term Review, the United States contributed to a multilateral package of concessions by agreeing to reduce tariffs on 49 tropical products by 25 percent. All developed countries and several developing countries contributed concessions to this package.

Since February 1990, approximately 50 countries -- including the United States -- have submitted proposals, as called for in the procedures established in the Tropical Products Negotiating Group. Most of the developed countries presented proposals that were in line with the overall objective in the market access group (about a one-third reduction in tariff rates).

---

[5] There is no agreed definition of tropical products for purposes of these negotiations. Thus, there is considerable overlap with other negotiating areas, particularly agriculture. The negotiating group has used the following broad product categories: (1) Tropical beverage items; (2) Spices, flowers and plaiting products; (3) Certain oilseeds, vegetable oils, vegetable oils and oilcakes; (4) Tropical roots, rice and tobacco; (5) Tropical fruits and nuts; (6) Jute and hard fibers; and (7) Natural rubber and tropical wood.

The developing countries that presented proposals primarily agreed to bind their tariffs at varying levels, with very minor (if any) reductions in the level of protection. Several simply want credit for autonomous liberalization programs they have undertaken.

The United States offered to reduce tariffs and non-tariff barriers on agricultural tropical products in a manner consistent with its agriculture proposal -- provided others do the same. The U.S. proposal also allows for the possibility of a longer transition period, and retention of moderate tariffs on agricultural tropical products at the end of the period, for the less advanced developing countries. Consistent with the U.S. participation in the integrated market access negotiations, concessions on industrial tropical products would be negotiated on a request/offer basis. The United States is prepared to accelerate liberalization of its market access restrictions on an agreed list of agricultural tropical products -- provided other countries do the same. On industrial tropical products, accelerated implementation is a subject for further discussion and negotiation in the context of the integrated request/offer negotiations.

Textiles

Trade in textiles and apparel is regulated by the Multifiber Arrangement (MFA) which was negotiated under GATT auspices in 1974 and has been extended through successor agreements to July 31, 1991. The MFA includes most of the world's major textile producing and importing countries, and allows signatories to impose quantitative restrictions on imports to prevent market disruption even though such restrictions normally would be inconsistent with the GATT. Most safeguard measures under the Arrangement have taken the form of bilateral agreements.

As a result of the Mid-term Review, participants agreed to begin substantive negotiations on the "modalities" or methodology for textiles and apparel trade to make the transition from the MFA to strengthened GATT rules.

The negotiating framework for textiles and apparel left all options open on all aspects of the transition from the current system under the MFA, and other measures taken outside the MFA, to the system of strengthened GATT rules and discipline resulting from the Uruguay Round negotiations.

This provided the United States with the opportunity to explore fully, through consultation, the optimal transition regime to seek in the negotiations. The Mid-term agreement marked an important turning point in the negotiations with an agreement to focus on all restrictions to trade in textiles and apparel; many countries would have liked the negotiations to focus only on the

MFA. It was recognized that all countries -- developed and developing -- have to contribute to trade liberalization in textiles and apparel.

The United States has maintained that a transition regime of ten years will be necessary. This will enable the United States to address problems of market disruption, ensure an orderly increase in imports, and ensure that the integration takes place on the foundation of strengthened GATT rules and disciplines. The United States is prepared to consider removal of products presently covered by the MFA from the transition mechanism where appropriate, and to apply progressively increasing growth rates to quotas during the transition.

During 1990, work intensified in the negotiating group. The U.S. delegation pressed for alternatives to the MFA, such as global quotas and tariff rate quotas, to achieve the transition for textiles and apparel under a strengthened GATT, and the United States elaborated its views on the structure of a global quota. Disagreement emerged in the early stages of the negotiations over global quotas versus an MFA-based approach, with most participants favoring an approach based on the structure of the MFA.

The European Community and the International Textiles and Clothing Bureau (ITCB), an association of exporting (developing) countries, have worked toward a transition mechanism based on a liberalized MFA. A key element of the EC approach, as in the U.S. approach, is the adequate strengthening of GATT rules and discipline in areas such as safeguards, rules governing developing country participation in the trading system, remedies against subsidies and dumping, intellectual property protection, and tariff and non-tariff barriers to trade.

The ITCB developed a detailed proposal which calls for progressive liberalization of MFA quotas over a six-year timeframe, through a combination of increasing growth rates and elimination of quotas on certain products. The ITCB proposal would strengthen the criteria for taking new quota actions, by moving from the present MFA standard of "market disruption" to one of "serious injury," as is applied to safeguards actions under GATT Article XIX.

Canada and Japan have worked closely with the United States on key issues. Canada's position on major issues is very close to the U.S. position. Japan, which has never used MFA quota arrangements to protect its market, wants to ensure that it has the flexibility to apply transitional safeguards if necessary.

The negotiating group on textiles and apparel reached agreement on a text to forward to ministers in Brussels in late November 1990. The text aimed at the eventual integration of this important sector into the GATT system under strengthened rules and discipline using the existing structure of the MFA as a point of departure. This follows the mandate for negotiation established at Punta del Este. While key differences remain, the text generally was an acceptable starting point for ministerial deliberations. Notwithstanding some progress in informal discussions in Brussels, the major outstanding issues still remain, and include the questions of duration of the transition of the textile sector to the strengthened GATT, growth rates to be applied to existing and new quotas, the safeguard mechanism to be applied during the transition period, and the relationship of the transition mechanism to strengthened GATT rules.

Other Non-Tariff Measures

Preshipment Inspection

The U.S. private sector has become increasingly concerned about the new form of non-tariff barriers imposed as a result of preshipment inspection (PSI) procedures employed by a number of countries. Preshipment inspection entities are companies hired by developing countries to inspect, for quality and quantity, other countries' exports destined for those developing countries. The PSI companies also ensure that the price charged for a shipment does not circumvent exchange control regulations or customs duties of the country of importation. These companies operate on the territory of exporting governments. The major users of preshipment inspection are Indonesia, the Philippines, Nigeria and Zaire.

The U.S. chemical and paper industries, as well as others, have experienced major difficulties in trying to export to countries that use PSI services. Among these difficulties are delays in shipment, arbitrary rejection of the contract price of the shipment in question, and sharing of confidential business information with unrelated entities. Consequently, U.S. industries strongly support efforts by U.S. negotiators to conclude a GATT agreement on preshipment inspection.

In early 1990 the United States tabled a proposal in the Negotiating Group on Non-Tariff Measures to discipline the activities of preshipment inspection entities. Similar proposals were tabled by the EC and Austria. Zaire tabled a proposal which reflected the views of the countries that use PSI. An informal drafting group was established in the spring of 1990 to develop a consensus text on preshipment inspection.

Agreement was reached informally on a preshipment inspection text at the Brussels ministerial meeting, although the text was never forwarded to the Trade Negotiations Committee (TNC) for acceptance. The informal agreement contains provisions to address the concerns of U.S. exporters and should help facilitate

U.S. exports to countries that use PSI services. Among the key provisions of the agreement are obligations for PSI companies to:

-- Approve the shipments (issue a clean report of findings) within five days of inspection or provide the exporter with the reasons why such approval was not granted;

-- Protect confidential business information and avoid conflicts of interest;

-- Refrain from verifying prices for the purpose of seeking to arbitrarily lower the contract price of the shipment in question;

-- Provide exporters with the right to explain their prices throughout all stages of the price verification process; and

-- Inform exporters of all procedural requirements necessary for the exporter to obtain a clean report of findings.

In addition, the draft agreement provides for a mechanism to resolve disputes between exporters and PSI companies on an expedited basis. This mechanism would be jointly administered by the International Chamber of Commerce (representing exporter interests) and the International Federation of Inspection Agencies (representing the interests of PSI companies). The decisions of panels formed under this mechanism would be binding upon the private parties to the dispute. Finally, the agreement includes provisions for notification, review, consultation and dispute settlement.

Rules of Origin

An important U.S. objective in the Uruguay Round has been to subject rules of origin to GATT discipline. Private sector advisors, particularly the electronics industry, strongly supported GATT negotiations in this area. In their view, the absence of multilateral discipline on rules of origin created a strong element of unpredictability in the international trading environment.

The United States submitted a proposal on rules of origin to the Negotiating Group on Non-Tariff Measures in September 1989. The European Community, Japan and Hong Kong followed with their own proposals. An informal drafting group was established in the spring of 1990 to consider these proposals in detail and to develop a consensus text on rules of origin. A text was agreed informally at the Brussels ministerial meeting, although it was never forwarded to the TNC for acceptance.

Key provisions in the draft rules of origin agreement are:

- A requirement for contracting parties to publish changes to their rules of origin or new rules of origin at least sixty days before they enter into effect;
- A right for traders to obtain from the customs authorities of other countries binding assessments of the origin of their products prior to shipment from the customs authorities of other countries;
- An obligation to express rules of origin in a positive manner, i.e., to explain what confers origin as opposed to what does not confer origin;
- An obligation for origin determinations to be subject to administrative or judicial review in the country where the determination is made;
- The establishment of a GATT Committee on Rules of Origin to oversee the operation of the agreement; and
- The application of the GATT consultation and dispute settlement provisions to rules of origin.

In addition, contracting parties tentatively agreed upon a three-year work program to harmonize non-preferential rules of origin (those used to determine most-favored nation status, for antidumping purposes, for government procurement purposes, etc.). This work program is to be carried out jointly by the GATT and the Customs Cooperation Council. The objective of the work program is to establish origin rules for individual products based principally on the change in tariff classification method to determine whether substantial transformation has occurred. These rules would be incorporated into the GATT rules of origin agreement.

CHAPTER 2

STRENGTHENING GATT RULES AND THE GATT AS AN INSTITUTION

To obtain "a more effective system of international trading disciplines and procedures" is an overall U.S. negotiating objective identified in section 1101 of the 1988 Act. This objective is to be obtained both by reforming trade rules and strengthening the GATT as an institution. The principal statutory objectives in this area include improvement of GATT rules and the codes that resulted from the Tokyo Round of multilateral trade negotiations; broader transparency in trade policy; improved rules to deter unfair trade practices; the application of strengthened rules to developing countries, to assure their integration into the multilateral trading system; a more effective and expeditious dispute settlement mechamism; and greater coordination between international trade and monetary systems and institutions. This chapter outlines the progress made to date toward reform of rules in these areas and toward strengthened institutional procedures.

Trade Rules Reform

Throughout the negotiations, the United States has been guided by the premise that the best guarantee of meaningful trade liberalization is an effective, enforceable and transparent set of rules governing trade practices -- including unfair practices such as dumping and subsidies, as well as import relief measures applied to fairly traded goods. Strengthened GATT rules are also essential to the improvement that the United States seeks in the GATT dispute settlement procedures.

A number of different negotiating groups have focused on the reform of existing trade rules. At the outset of the Round, a Negotiating Group on GATT Articles was established to review existing GATT provisions identified by interested contracting parties. A separate Negotiating Group on Safeguards was created, since safeguards had been specifically identified in the Punta del Este Declaration as a subject for negotiations. A Negotiating Group on MTN Agreements and Arrangements was also established to improve, clarify, and expand the codes negotiated during the Tokyo Round. Negotiations under the auspices of that Group were conducted on the Standards Code, the Customs Valuation Code, Import Licensing Code, and Antidumping Code. An independent Negotiating Group on Subsidies and Countervailing Measures was created because that subject had also been specifically identified in the Punta del Este declaration. Finally, a renegotiation of the Government Procurement Code was conducted separately among its signatories in parallel with the

Uruguay Round, pursuant to provisions of the Procurement Code. The following describes the work in all these areas.

GATT Articles

1. Reform of Balance of Payments Rules (Articles XII and XVIII)

The United States identified reform of GATT provisions covering trade measures taken for balance of payments (BOP) reasons as an important element for the integration of developing countries into the multilateral trading system. The United States has sought to curtail the use of such measures and to limit their use to those times when a country is experiencing legitimate balance of payments difficulties. Current BOP rules allow developing countries with balance of payments problems to impose the most restrictive kinds of trade barriers for an indefinite period of time, often for decades so that the restrictions serve long-term protective purposes rather than temporary balance of payments purposes. As a result, GATT contracting parties have little recourse within the GATT to effectively challenge these restrictions. Balance of payments difficulties are used to justify more than 85% of the non-tariff measures notified to the GATT by its members. The U.S. private sector has equated BOP reform with access to developing country markets and believes that gains in other areas of the negotiations, particularly market access concessions, could be undermined or negated without strengthened BOP rules.

The United States and Canada jointly submitted two proposals (in December 1989 and June 1990) to the Negotiating Group on GATT Articles, aimed at reducing the use of non-tariff measures justified for balance of payments reasons. Under these proposals, developing countries experiencing serious balance of payments problems would be required to: (1) select the least-damaging types of trade restrictions, i.e., a single transparent tariff surcharge applied across-the-board to imports rather than multiple quotas, bans and other restrictions; (2) specify a reasonable time frame for phasing out the restrictions; and (3) undergo more rigorous GATT surveillance on a regular basis and implement recommendations by the GATT Contracting Parties for modifying measures. In addition, the proposals clarify the rights of other Contracting Parties to challenge these restrictions in GATT dispute settlement proceedings. The European Community also tabled a proposal (in February 1990) which is similar to the U.S./Canada proposals.

A majority of the developing countries have resisted strongly any negotiation of BOP reform, arguing that reform efforts are designed to eliminate the rights of developing countries to take legitimate balance of payments actions. Many argue that current disciplines are adequate and that their BOP problems remain severe. Some developing countries, such as India and Brazil, have thus far refused to negotiate on this issue. As a result, there was no text on BOP reform to forward to Brussels for ministerial consideration. Progress on BOP reform, which the United States has identified as essential, will be determined by the pace of progress in other areas, particularly agriculture.

Indications are that a number of countries who joined in opposing negotiation of BOP reform may be willing to reconsider their position, particularly as some are abandoning the use of quantitative trade barriers taken to address balance of payments problems. The United States has continued to make clear that BOP reform is an essential part of the overall Uruguay Round package and is necessary to address the imbalance of rights and obligations that currently exist in the General Agreement.

2. Other Duties and Charges (Article II:1(b))

Negotiations have resulted in a draft decision, based on a proposal by New Zealand, that requires contracting parties to record in their schedules all duties and charges in addition to the ordinary customs duty that are applied to imports of "bound" items. This requirement will greatly enhance transparency in the schedules of concessions appended to the GATT. The draft decision has been accepted by all contracting parties and awaits formal approval at the conclusion of the Round. This draft decision does not apply to a charge equivalent to an internal tax imposed consistent with GATT Article III, an antidumping or countervailing duty, or customs fee covering the cost of services rendered.

3. State Trading (Article XVII)

Negotiations also have yielded a draft decision, based on proposals by the United States and the European Community, that clarifies GATT disciplines and increases transparency in the operation of state trading enterprises. It affirms the obligation of GATT contracting parties to ensure that their state trading enterprises operate in accordance with all other GATT Articles in addition to Article XVII. Improved transparency is called for, with provisions to strengthen the current notification procedures under Article XVII and to establish a working party to examine notifications and to formulate an illustrative list of activities of state trading enterprises. The draft decision has been accepted on an ad-referendum basis by all contracting parties.

4. Preferential Trading Arrangements (Article XXIV)

A draft decision interpreting Article XXIV clarifies the procedures and criteria under which a customs union or free-trade area can be formed. It requires that agreements establishing customs unions or free-trade areas be fully implemented within ten years unless exceptional circumstances prevail. It further clarifies the procedures to be followed when a contracting party proposes to increase a bound rate of duty in the process of forming a customs union. Pursuant to this decision, third parties outside of the preferential arrangements will have the ability to scrutinize these arrangements in closer detail. Finally, the decision clarifies the obligations of contracting parties with respect to sub-central entities. The draft decision does not yet have ad referendum agreement from all participants.

5. GATT Waivers (Article XXV:5)

Negotiations have resulted in a draft decision, based on a proposal by the European Community, that would subject all future waivers granted under Article XXV:5 to clearer conditions and disciplines than currently exist. It also would terminate, by a date to be agreed upon, all existing waivers. Several countries, including the United States, have indicated that acceptance of this decision will depend on the results of other Uruguay Round negotiations. Since acceptance by the United States would result in termination of the waiver granted to the United States for agricultural import restrictions, a final U.S. position on acceptance of this text will be directly linked to the results of the agriculture negotiations.

6. Protocol of Provisional Application (Article XXVI)

A draft decision on the GATT Protocol of Provisional Application (PPA) has been prepared on the basis of a proposal made by the European Community. If adopted, it would eliminate the ability of countries to "grandfather" existing mandatory legislation inconsistent with the GATT when acceding to the GATT. The EC proposal also would require the elimination of measures grandfathered by current contracting parties by a date to be agreed upon. Several countries, including the United States, have indicated that acceptance of revisions to the Protocol will have to be considered in the context of the overall Uruguay Round results.

7. Renegotiation of Tariff Concessions (Article XXVIII)

Under current procedures implementing Article XXVIII of the GATT, if a party wishes to modify or withdraw a tariff concession it previously granted on a product, it provides adequate compensation (usually in the form of reduced tariffs on other products) to those countries that are principal suppliers of the affected product. A draft decision interpreting Article XXVIII would create an additional right to compensation for certain suppliers based on the importance of a particular export to their total exports. When calculating compensation for a new product, additional factors, including export growth, could be taken into consideration. In addition, the decision provides for compensation when tariff concessions are replaced by tariff-rate quotas. The draft decision has been accepted by all contracting parties and awaits final acceptance at the conclusion of the negotiations.

8. Non-Application of GATT to Acceding Countries (Article XXXV)

Under current GATT Article XXXV, a contracting party may decline to apply GATT provisions to a newly acceding member at the time of accession, provided the parties have not entered into tariff negotiations with one another. A draft interpretation of GATT Article XXXV, based on a U.S. proposal, would allow negotiations on an acceding country's schedule of tariff concessions to take place concurrently with negotiations on its protocol of accession without impairing the right of the contracting party or the acceding country not to apply the GATT to the other. Several countries have expressed a need for additional time to review this decision.

Safeguards

The existing GATT safeguard provision, Article XIX, permits a contracting party to impose import restrictions as a safeguard against increased imports of a product found to cause or threatening serious injury to a domestic industry. Section 201 of the Trade Act of 1974, as amended, implements this provision in the United States. Unlike Section 201, however, Article XIX does not limit the duration of safeguard measures and provides little specificity on the criteria for applying such measure. Moreover, Article XIX does not ensure adequate transparency in terms of notification, consultation or multilateral review. In addition, countries have increasingly ignored Article XIX, acting outside GATT rules by using so-called "grey area measures," including voluntary restraint agreements (VRAs) which are not subject to specific GATT rules or to multilateral monitoring.

U.S. objectives for this negotiation were established through careful private sector consultation. Several plenary advisory meetings on safeguards were held and a written survey was circulated to ensure that advisors' views were thoroughly considered. Based on these views and legislative guidance, U.S. negotiators have sought an agreement which clarifies and improves GATT safeguards rules and procedures and encourages contracting parties to abide by, rather than ignore, these provisions.

The text that was submitted for consideration at Brussels reflects substantial progress made toward meeting U.S. objectives. Specific criteria are included in the text for determining serious injury or threat thereof and the causal link between increased imports and serious injury. Provision is made for critical circumstances and problems with perishable products. The text elaborates in detail improved procedures for notifying safeguard investigations when initiated, when injury is found and when action is taken. A public investigation and report are required and throughout the investigatory process interested contracting parties must be provided detailed information on the safeguard measure under consideration as well as the opportunity to consult. A safeguards committee will be established to monitor such measures.

If this text were adopted, safeguard measures would be subject to a maximum duration and would be reviewed, progressively liberalized, and terminated when no longer necessary to remedy injury and to facilitate adjustment. Agreement on a specific maximum duration could not be achieved prior to the Brussels meeting.

Much debate has focused on incentives to encourage use of GATT safeguard rules, rather than VRAs, when imports cause serious injury. One incentive advocated by certain countries would permit the application of safeguard measures selectively against specific exporting countries. However, this proposal has been strongly opposed by most participants who insisted that all safeguard actions should be taken on an MFN-basis. The countries supporting selectivity offered in Brussels to drop this proposal, in exchange for greater flexibility in allocating MFN quotas. This matter could not be resolved at the Brussels meeting and will require further negotiation. An incentive included in the current text which is supported by most countries (and which has considerable U.S. private sector support) would suspend the existing right in Article XIX to retaliate automatically against safeguard measures, provided that such measures do not exceed a duration of three years.

The text reinforces and strengthens existing GATT prohibitions against grey area measures taken outside GATT rules. It also establishes a schedule for phasing out existing grey area measures. The period of time for phasing out such measures continues to be debated.

Subsidies and Countervailing Measures

The Uruguay Round negotiations provided the United States with an opportunity to address the inadequacies of the current GATT Subsidies Code and to increase international discipline on government provision of subsidies and related trade-distorting measures. A number of specific elements are key to the overall U.S. position in the negotiations. Through negotiation, we have sought to:

(1) maintain and improve the prohibitions on the use of export subsidies;

(2) increase and extend international discipline on the use of domestic subsidies;

(3) improve the mechanisms to resolve disputes, including the creation of a credible and effective mechanism for multilateral dispute resolution in the subsidies area;

(4) bring developing countries under more substantive the obligations and any improvements in existing rules; and

(5) achieve, within the agreement, recognition of the subsidy-like nature of certain practices, such as targeting and dual energy pricing, and adopt appropriate disciplines in a new subsidies agreement to address such practices.

The draft "Final Act"[6] contains the text issued by the Chairman of the Subsidies Negotiating Group on November 6, 1990, which accurately reflects the status of the negotiations. The negotiations in this area have been slow and careful, reflecting the difficult policy issues confronting governments. Indeed, establishment of a framework for negotiations took considerable time.

At the Montreal Mid-term Review, the United States and other participants agreed to a negotiating framework that would enable negotiators to pursue increased discipline on subsidies and possibly to identify certain subsidy practices as permissible. This framework, or "traffic light" approach, provides for categories of subsidies which would be prohibited under all circumstances (red category); subsidies which would be actionable, subject to demonstration of adverse trade effects (yellow category); and possible permissible subsidies which, if the criteria were satisfied, would neither be actionable under GATT, nor countervailable under U.S. law (green category).

Annex I to the negotiating text submitted to the TNC incorporates the Illustrative List of Export Subsidies prohibited under the existing Subsidies Code. A number of modifications to that list have been accepted by parties to the negotiations, subject to reaching overall agreement in this area.

---

[6] The draft Final Act embodying the results of the Uruguay Round negotiations was circulated as an informal TNC document (MTN.TNC/W/35) on November 26, 1990. On December 3, 1990, a revision of that document (MTN.TNC/W/35/Rev.1) was distributed at the Brussels ministerial meeting. The revisions were limited to corrections of typographical errors and other purely technical corrections.

Additional modifications, including some proposed by the United States, have yet to gain full acceptance. These include modifications which would further improve the export subsidy rules by updating them to reflect the emergence of new variations in export subsidies, and prohibit exchange rate risk insurance schemes.

In an extension of discipline to subsidies other than export subsidies -- another objective of the United States -- Article 3.1(b) of the negotiating text would prohibit domestic subsidies tied to local content requirements. In addition, Article 6.1 identifies a number of domestic subsidies the use of which would be _presumed_ to cause serious prejudice to the interests of other parties. As the text is currently drafted, these presumptively prejudicial subsidies would include domestic subsidies in excess of 5 percent _ad valorem_, subsidies to cover operating losses, and direct forgiveness of debt by governments. Under those circumstances, the subsidizing government would bear the burden of establishing that no serious prejudice existed.

Also consistent with the "traffic light" approach, the United States has responded to the proposals by others to identify so-called "green" subsidies, _i.e._, domestic subsidies which would be considered non-actionable without regard to resulting trade distortions. The number of programs still under discussion in this category has been reduced to four from the thirteen proposed by various delegations originally. These four subsidy categories are: regional development, research and development, structural adjustment, and environmental protection. In addition, provisions are included for prior notification and review of "green" programs, as well as a residual right to challenge any such program if it is causing serious and long-lasting trade effects. The United States continues to challenge the basic premise of such a "green" category, pointing out that the poorly worded provisions currently in the text could result in the creation of loopholes which would undermine any disciplines otherwise negotiated.

Provisions in the current negotiating text on the multilateral dispute resolution process, if accepted, would materially improve the clarity of such key terms as serious prejudice and significantly tighten the timing and automaticity of the process. This is particularly so with respect to obtaining relief in the case of a prohibited subsidy practice. Also, Annex V of the negotiating text contains new clarifications which would improve the ability of a party to obtain information critical to demonstrating "serious prejudice" especially in the situation of adverse trade effects in third-country markets.

On integration of developing countries, the negotiating text contains a skeletal outline that has the potential for bringing the developing countries more fully into the multilateral subsidies agreement and providing for their more systematic assumption of the broad range of obligations. As it is presently drafted, however, the process of integration would take too long and is too vague with regard to developing country obligations. It provides that developing countries assume only the obligation not to grant prohibited subsidies, and is therefore inadequate. However, further negotiation on that provision could result in a more effective method for developing country integration.

Perhaps the most difficult objective to address in the negotiation has been that of disciplining subsidy-like practices such as dual energy pricing and targeting. A minority of countries thus far has supported U.S. efforts to focus attention on the threat to the effectiveness of new GATT rules posed by such practices. These issues were identified in the 1988 Act as practices not adequately covered by GATT rules. In Article 1 of the current negotiating text, which establishes the scope of the agreement, a provision is retained for elaborating so-called "new practices" other than traditional subsidies (e.g., targeting or dual pricing). However, no specific language has been inserted in the text under this Article, reflecting the current lack of consensus and support among other participants for the U.S. position.

Antidumping

The Tokyo Round Antidumping Code was identified as a subject of intense interest by a number of participants in 1987. Conceptual proposals were tabled by Korea, Japan and the Nordic countries, and were supported by Hong Kong, Singapore, and India. The proposals made it clear that these countries sought to make fundamental changes in the Antidumping Code, which would impair the ability of the major countries with antidumping regimes -- the United States, EC, Australia and Canada -- to impose effective remedies to counteract injurious dumping.

The United States argued that the existing Code, while imperfect, provided the basis for effective remedies to serious trade problems. The United States was supported in its position by the EC, Canada, Australia and New Zealand. The United States submitted its own proposal to suggest a strengthening of the current Code to address problems stemming from circumvention and repeat dumping, and to improve procedural standards. During 1988, the proposals from Japan and Korea were refined; and Hong Kong tabled a new conceptual paper underscoring the concerns of the group of exporting nations that were most frequently the subject of antidumping orders.

The negotiations intensified in mid-1989, when a number of countries -- Hong Kong, Japan, Korea, the Nordics and Singapore most prominent among them -- tabled an additional barrage of proposals that would have resulted in a fundamental transformation of the antidumping remedy. These proposals included: adoption of a predation pricing standard, a public interest proceeding, a mandatory lesser duty rule and an automatic sunset provision under which an order would terminate after a fixed period of time regardless of whether dumping and injury were still present.

The United States responded to these proposals by continuing to make clear that its fundamental negotiating objective was to ensure that antidumping rules continue to provide an effective tool to combat injurious dumping. In November 1989, the United States tabled its own proposal to improve the Code by:

- Establishing explicit Code remedies to address practices that result in the circumvention or evasion of antidumping duty orders; and

- Strengthening minimum procedural standards such as increased transparency in the conduct of antidumping proceedings to ensure that antidumping proceedings abroad are conducted fairly and openly and are not used to the detriment of U.S. exporters.

In response to the many methodological reforms to the dumping, injury and causation inquiries that were proposed by other countries, the United States indicated that it would adopt a problem-solving approach to individual proposals. However, U.S. negotiators made clear that an amended Antidumping Code must continue to preserve the essential function that unfair trade remedies permitted under GATT Article VI have played in the context of GATT rights and obligations.

The United States has made significant progress toward achieving the objectives outlined above. In particular, the United States has succeeded in:

- Advancing its proposals to improve Code remedies for circumvention and other repeat dumping practices;
- Winning virtually universal support for improvements to minimum procedural standards and transparency; and

- Making clear that proposals that would fundamentally undermine the antidumping remedy cannot be included in any final agreement.

In addition, U.S. negotiators have demonstrated a willingness to consider moderate amendments to methodology that clarify existing GATT rules in ways that reflect the interests of both antidumping remedy users as well as exporters.

Other Tokyo Round Codes

Agreement on Technical Barriers to Trade

The United States sought to improve the operation of the Tokyo Round Agreement on Technical Barriers to Trade ("Standards Code") during the course of the Uruguay Round, pursuant to the objectives in the 1988 Act. The current negotiating text encompasses: (a) expanded discipline to cover conformity assessment procedures; (b) coverage of processes and production methods; (c) coverage of non-governmental regional standards development; and (d) improved transparency. The largest remaining disagreement in substance is on the level of obligation for local governments in the development and application of technical regulations and conformity assessment procedures. Work still needs to be done to improve the dispute settlement procedures in line with the improvements to be adopted by the Negotiating Group on Dispute Settlement.

It is likely that the Standards Code will no longer cover sanitary and phytosanitary measures in light of the provisions under discussion and negotiation as part of the agriculture negotiations. (See Chapter 3).

The following are changes to key provisions of the Code negotiated to date:

(1) Conformity Assessment Procedures: Strengthened discipline now goes beyond testing and certification to cover the range of conformity assessment procedures (*e.g.*, inspection, laboratory accreditation, etc.) used to determine conformance to a technical regulation or standard. Fundamental principles and obligations are covered under a new Article 5, while Article 6 addresses the acceptance of results of conformity assessment procedures by another country.

(2) Regional Transparency: Transparency in non-governmental regional standards development (*e.g.*, the European bodies CEN and CENELEC) is covered in a "Code of Good Practice" applicable to all voluntary standards development (Annex 3 to the negotiating text). It will require organizations to publish a notice of standards under development, and afford an opportunity for comment by foreign parties.

(3) Processes and Production Methods (PPMs): Full coverage of processes and production methods has been achieved through an amendment to the definitions for standards and technical regulations.

(4) **Transparency in Bilateral Agreements: Notification of bilateral and multilateral agreements on standards-related measures will now be required under Article 10.**

The following are the remaining areas of disagreement in the negotiation:

(1) Technical Regulations and Conformity Assessment Procedures at the Local Government Level: The United States has opposed proposals submitted thus far to strengthen obligations for central governments to: (1) ensure full compliance by state and local governments, and (2) notify the proposed regulations of state and local governments.

(2) Dispute Settlement Procedures: Discussions to improve the procedures for disputes concerning technical barriers to trade have focused on the procedures for establishing a Technical Experts Group--a feature unique to the existing Code. Work on other aspects (e.g., panels, retaliation outside the scope of the agreement) has been held in abeyance pending results in the Negotiating Group on Dispute Settlement and the final form of this agreement.

(3) Code of Good Practice for Voluntary Standards Development: Concerns remain with respect to the inclusion of a code of good practice (Article 4 and Annex 3) for standards developers. The United States is continuing to consult with the various interested domestic groups on this proposed voluntary agreement.

(4) Sanitary and Phytosanitary Measures: The relationship of any agreement reached in the Agriculture Negotiating Group's Working Group on Sanitary and Phytosanitary (S&P) Measures will need to be addressed as many of the measures under discussion in that Group overlap with coverage under the Standards agreement. Paragraph 47 of the S&P text forwarded to Brussels excludes the possibility of pursuing dispute settlement under the Standards Code if the measure is covered by the S&P Agreement.

(5) Unnecessary Obstacles to Trade: The United States has remaining concerns with respect to language (Article 2.2) which defines an unnecessary obstacle to trade as one that is "...more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create." We have sought further discussions with other participants to resolve these concerns.

Agreement on Customs Valuation

The Negotiating Group on MTN Agreements and Arrangements agreed on a solution to the three valuation issues that had been raised in proposals:

(1) to clarify the Customs Valuation Code to deal with cases of suspected fraud;

(2) to facilitate obtaining a reservation of rights under the Code to retain minimum values; and

(3) to conduct a study on discounts for sole concessionaires.

These issues reflect concerns of Code signatories or prospective Code signatories in implementing the Code. Proposals to address fraudulent invoicing on customs declarations (specifically, who is ultimately responsible for proving that fraud does not exist) received widespread support from both signatory and non-signatory developing countries.

The Group agreed that it was not necessary to amend the code to deal with the concerns raised. The agreement on fraud is proposed to be implemented as a Customs Valuation Committee decision.

Agreement on Import Licensing Procedures

Negotiations on the improvement of the Tokyo Round Agreement on Import Licensing Procedures ("Licensing Code") have been completed and should contribute substantially to greater transparency in the operation of import licensing regimes, the majority of which are operated by developing countries. It should be noted, however, that India has reserved its position on these improvements, pending action on its proposal to establish a GATT working party to consider extending parallel disciplines to export licensing procedures.

The proposed revised Agreement on Import Licensing Procedures is based upon a proposal submitted by the United States and Hong Kong in September 1989. This agreement should facilitate market access to both developed and developing countries. Key improvements achieved are:

-- A firm deadline for publishing all necessary information on new or revised licensing requirements.

-- An obligation not to require an importer to approach more than three administrative bodies to obtain a license.

-- **Effective time limits for processing licensing applications.**

-- A strengthened requirement that automatic licenses must be granted freely within ten days.

-- An obligation that non-automatic licensing procedures may not extend beyond the measure they are implementing in terms of scope (i.e., product coverage) and duration.

-- A requirement to notify the Licensing Committee of all new or revised licensing procedures.

-- An effective mechanism for periodic review of the operation of the Agreement by the Committee on Import Licensing.

Agreement on Government Procurement

Renegotiations to expand and improve the Agreement on Government Procurement ("Procurement Code") are provided for in Article IX:6(b) of the Code. These negotiations began before the Uruguay Round and have been conducted separately among signatories to the Code.[7] However, most signatories to the Code intend to complete the renegotiation of the Code in parallel with the Uruguay Round.

The first phase of the negotiations was completed in 1986 and implemented by all signatories in February 1988. The results of this negotiating phase were set forth in a new Protocol to the Code, clarifying and strengthening the current disciplines of the Code. Signatories also increased the number of procurements covered by the Code by lowering the threshold for covered contracts.

While some areas of strong disagreement continue to block completion of the negotiations, significant progress has been made in the second phase of the negotiations, which began in 1988. Areas in which key signatories have reached substantial agreement include:

(1) extension of the Code to cover procurements by central government agencies which are not now covered;

(2) extension of the Code to cover significant subcentral government procurements;

---

[7] Current signatories to the Government Procurement Code are: Austria, Canada, EC, Finland, Hong Kong, Israel, Japan, Norway, Singapore, Sweden, Switzerland and the United States.

(3) extension of the Code to cover services contracts, including construction contracts (currently only goods contracts are covered); and

(4) strengthening of the Code by further amending it to require the establishment of a local bid protest system in each signatory and improved discipline on "offset" practices (requiring concessions from bidders which might favor or provide additional domestic economic benefits to the procuring country).

All signatories have offers on the table, except Hong Kong, Singapore, and Israel, which have stated that they need more time to consider their positions. The United States submitted its offer and requests on September 26, 1990. The United States offered to cover the few remaining federal executive agencies which are not already covered by the Code (primarily the Departments of Energy and Transportation); to seek the broadest possible coverage of state entities which have been offered by states; to cover federally-owned electrical utilities; and to refrain from imposing discriminatory purchasing requirements on telecommunications and electrical utilities.

Key differences among signatories, primarily the European Community and the United States, concern the following:

(1) Coverage of privately-owned firms: the European Community has argued that procurement procedures should be imposed on U.S. producers of telecommunications services and electricity (e.g., the Regional Bell Operating Companies and private, investor-owned electrical utilities). The United States has argued that the Government Procurement Code is designed to cover government behavior, not that of privately-owned firms.

(2) Threshold for coverage: The United States believes that meaningful coverage, particularly in the telecommunications area, must include contracts below the level of those offered by the European Community. The United States has proposed a threshold of approximately $65,000 for all contracts except construction contracts. The Community has offered to cover telecommunications contracts over approximately $600,000 and electrical equipment contracts over $450,000. The current Code threshold is $172,000 (calendar year 1991).

Other differences that require more time and technical discussion in order to be resolved are:

(1) the approach to covering services contracts -- the United States prefers a negative list approach and the EC prefers a positive list approach;

(2) the extent to which subcentral governments (e.g., state and local governments in the United States) will be covered -- the EC has offered to cover all government procurement agencies at the subcentral level; the United States has offered to cover the subcentral procurements volunteered for coverage by states; and

(3) the general threshold above which goods and services contracts will be covered -- the United States has proposed to lower the threshold; the EC refuses to lower the current threshold.

The Negotiating Group on MTN Agreements and Arrangements considered a number of proposals from developing countries relating to the terms of accession to the Procurement Code, but discussion of those proposals was inconclusive.

Institutional Reform of the GATT

Dispute Settlement

Section 1101(b)(1) of the 1988 Act provides specific negotiating objectives to be pursued in the negotiations on dispute settlement. The Administration has made substantial progress in meeting these objectives:

(A) to provide for more effective and expeditious dispute settlement procedures; and

(B) to ensure that such mechanisms within the GATT and GATT agreements provide for more effective and expeditious resolution of disputes and enable better enforcement of United States rights.

As a result of the Mid-term Review, significant interim amendments to the dispute settlement process have already been adopted. They entered into force on a trial basis on May 1, 1989, to be applied until the conclusion of the Round, when a decision must be taken whether to adopt them permanently. Those amendments corrected many of the procedural weaknesses in the process, eliminating opportunities to delay the establishment of a panel or to delay the proceedings after a panel is established.

The interim procedures provide time limits for consultations and other stages of the process, procedures for multiple complainants and intervention by third parties, and arbitration as an alternative to panel proceedings. Under the interim procedures, the maximum time from the request for consultations until the

GATT Council takes a decision on the panel report is limited to 15 months. As a result of these interim procedures, panels have been completing their work with fewer delays.

Despite these improvements, the dispute settlement process is still hampered by the ability of the losing party to block adoption of panel reports, the absence of an effective procedure to ensure that there is prompt compliance with panel findings, and the ability of the losing party to block the winning party's request to retaliate in the absence of compliance.

Since the Mid-term Review, U.S. negotiators have sought agreement on procedures that eliminate opportunities for either party to block the process at three key phases: when a panel is requested, when a panel or appellate body report is considered for adoption, and when the winning party wishes to exercise its right to retaliate if the losing party has not implemented panel recommendations. The U.S. delegation has also sought agreement on tight time limits for the dispute settlement process, consistent with the time frame permitted under section 301 of the Trade Act of 1974, as amended. Because the United States is as frequently a respondent as a complainant in GATT disputes, we have sought in these negotiations to improve the system in a way that is equally fair to both sides.

Under current procedures, the defending party may block a request for a panel, and any party may block adoption of a panel report if it loses. When panel reports are adopted, there is no set time frame for a losing defendant to come into compliance. Finally, where the losing defendant has failed to comply after a "reasonable period" (undefined), the complainant's request for authorization to retaliate can also be blocked by the defendant.

The U.S. delegation has taken the position that compliance with panel findings is the key to the credibility of the dispute settlement system. The process does not end with the adoption of reports; adoption is only the first step toward resolving the dispute. Therefore, in addition to seeking the elimination of opportunities for blocking, the United States has emphasized the need to ensure that where implementation is not forthcoming, affected parties can impose countermeasures to encourage implementation.

The latest draft agreement on dispute settlement as provided in the draft Final Act includes procedures that could result in automatic adoption of panel reports with a right of appeal to a standing tribunal. It also establishes a process by which the right to retaliate would be automatically granted if a losing party has not complied with panel findings (or paid compensation) within a certain time. The United States has supported that approach, provided there are strong rules in all areas.

Such automaticity, if adopted, would vastly improve the enforcement of new GATT rules, and the credible threat of retaliation should result in prompt compliance with dispute panel findings.

The current draft on dispute settlement still requires some modification and elimination of unacceptable provisions if it is to be the basis for an agreement that fully meets U.S. objectives. Moreover, the viability of such an ambitious dispute settlement mechanism is dependent on strengthened rules and far-reaching results in all the other areas under negotiation. If such negotiations are forthcoming, the dispute settlement negotiations can be concluded successfully.

Other countries have expressed serious concern about the authority that section 301 of the Trade Act of 1974, as amended, gives the United States to determine unilaterally that another country has violated its GATT obligations. Therefore, in the dispute settlement negotiations they are seeking a commitment from the United States that it will use the GATT dispute settlement mechanism to determine whether there has been a GATT violation. They also seek a commitment that in those cases section 301 authority would not be used to respond to a GATT violation without first completing the dispute settlement process. U.S. negotiators have responded that such a commitment could be made only if there are clear rules in all areas, enforceable through a dispute settlement mechanism that eliminates the possibility of blockage or delay at every stage of the process.

Functioning of the GATT System

A key objective in the negotiations has been to enhance the status of the GATT and to reinforce GATT principles in the development of international trade policy by all GATT members. As a result of agreements reached at the Mid-term Review, participants agreed to a substantial new trade policy review mechanism designed to enhance GATT surveillance of countries' trade policies. Additionally, there was agreement to improve institutional effectiveness through greater ministerial involvement in GATT activities and agreement to increase the contribution of the GATT to coherence in global economic policy-making including through closer ties between the GATT and the international financial institutions (IFIs).

Provisional implementation of the Trade Policy Review Mechanism (TPRM) has already resulted in enhanced surveillance. The TPRM review, undertaken by the GATT Secretariat along with GATT contracting parties, provides a comprehensive picture of a country's trade regime as well as an opportunity for other GATT members to comment on trade policies at meetings scheduled for that purpose. In the two years since the Mid-term Review, the following countries' policies have been reviewed: United States, Australia, Morocco, Colombia, Sweden, Japan, Canada, Hong Kong, and New Zealand. In April 1991, the European Community, Hungary and Indonesia will be reviewed. More recently, there was agreement to create a central repository for GATT notifications which should facilitate greater transparency.

The second objective, stronger involvement by trade ministers in GATT decision-making, was achieved in a commitment to hold ministerial meetings every two years. A decision whether to establish a steering group for the GATT at ministerial level remains to be made. The United States has proposed establishment of a Small Ministerial Group or GATT Management Board.

Also agreed is the need for continued cooperation among the GATT and the IFIs to achieve greater coherence in policy-making. One widely accepted proposal would require the GATT Director General to consult with the heads of the World Bank and IMF after the Round is concluded to review the implications of the Uruguay Round results for cooperation among the three institutions.

Commitments to Standstill and Rollback

Trade ministers made a political commitment in Punta del Este to halt and reverse protectionism, as reflected in the section on "standstill and rollback" in the Punta del Este declaration. A Surveillance Body was established to monitor these commitments throughout the course of the negotiations. The commitment was made to assure that countries would not seek concessions in payment for the removal of GATT-inconsistent measures, nor increase protection to improve their negotiating positions. The pledge also mandates that "rollback" of GATT-inconsistent measures take place during and prior to the final conclusion of the Uruguay Round.

At the beginning of the Round, participants, particularly the developing countries, urged that the rollback commitment be made operational, to assure that participants would not have to wait until the conclusion of the Uruguay Round for the removal of GATT-inconsistent measures, and to prevent countries from seeking concessions for the removal of such measures. To assist the Surveillance Body, the GATT Secretariat prepared a comprehensive list of measures maintained by contracting parties that had been found in GATT dispute settlement proceedings to violate the GATT. The Surveillance Body provided an opportunity for participants to raise concerns about violations or potential violations of the standstill and rollback commitments (such as pending legislation). The Surveillance Body has been useful as a forum to air concerns during the course of negotiations thus far.

The draft Final Act refers to the progress made by the Surveillance Body as of its last meeting in November 1990, and it leaves open the possibility for decisions with respect to rollback of GATT-inconsistent measures. The United States, like other countries, submitted a report on the implementation of its commitment to rollback citing the implementation of panel recommendations on Custom User Fees and the Superfund Tax -- both found to be GATT-inconsistent by GATT dispute settlement panels. Other contributions to rollback have been made by Argentina, Japan, the EC, Hong Kong, Korea, Australia, Chile, Canada, Colombia, Finland and Indonesia.

The key outstanding issue for the Surveillance Body is the commitment made at Punta del Este that all "inconsistent" measures be phased out or brought into conformity within an agreed timeframe, not later than the formal conclusion of the negotiations.

CHAPTER 3

AGRICULTURE

At every stage of the Uruguay Round negotiations, including prior to its launch in 1986, agriculture has played a decisive role in the multilateral trade talks. Fundamental agricultural trade reform was and is a key element of the negotiating agenda established at Punta del Este. Together with other agricultural exporting countries, the United States sought a mandate for negotiations that assured such reform within GATT. Thus, in September 1986 in Punta del Este, ministers agreed that the negotiations should "aim to achieve greater trade liberalization and to bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines".

The 1988 Act confirmed the objectives for the negotiations in agriculture agreed at Punta del Este in 1986. In accordance with the Act, the United States has pursued agricultural reform in order to achieve more open and fair conditions for trade in agricultural commodities. In keeping with the Act, the United States has focused on comprehensive results in agriculture by addressing: barriers to market access; export subsidies; internal supports that distort trade; and sanitary and phytosanitary restrictions. The United States, by the time the Uruguay Round was launched, had already embarked on a substantial domestic reform program for agriculture. The United States sought to assure that this effort was reciprocated multilaterally in order to achieve greater reliance on market forces as opposed to market sharing, an approach favored by other major exporting nations. The United States is continuing in its efforts to achieve the objectives of the Act in the Uruguay Round.

There can be no doubt that the trading system requires better GATT rules for agricultural trade. Current rules covering agriculture do not adequately address export subsidies, import access (including variable levies), or trade-distorting domestic support programs, to name only a few examples. Trade in agricultural commodities today is more reflective of a government's ability to finance subsidies or impose trade barriers than of the farm sector's ability to compete.

The current debate on agriculture is often mischaracterized as a disagreement between the United States and the European Community. This is in fact not the case. The United States is joined by many other agriculture exporting nations that are no longer willing to accept a fundamentally unfair agricultural trading system. A coalition of agricultural exporters from developed and developing countries, known as the Cairns Group,[8] has been a vocal proponent of fundamental reform. Formation of the Cairns Group marked the beginning of strong cooperation and participation by developing countries in the negotiations in agriculture as well as the other areas of negotiation. Over the course of the negotiations many Eastern European countries have also joined the call for substantial liberalization of agricultural markets.

For the United States, agriculture is a key issue in the negotiations, but it is not the only area where the United States needs ambitious results. However, for some countries, agriculture is not merely a very important issue, it is the only important issue. For example, countries such as Argentina, Brazil, Colombia and Thailand have made it clear that without substantial reform in agriculture, they are not prepared to participate in meaningful agreements in other negotiating areas. This approach is gaining increasing support from participants and explains why progress in other areas of importance to the United States has not been as rapid as expected.

The United States was the first to submit a negotiating proposal on agriculture (July 8, 1987). Proposals from the Cairns Group, Canada, the European Community (EC), Japan and the Nordic countries (Finland, Norway, Sweden and Iceland) followed in 1987. All proposals recognized the need to achieve agricultural trade reform, but there were fundamental differences in the scope and extent of the reforms. The United States and Cairns Group wanted to begin a long-term process for eliminating all trade-distorting support programs, market access barriers and export subsidies for all commodities in all countries. The EC, the Nordics and Japan wanted to maintain two-price systems where domestic prices remain supported at levels in excess of world market prices through import quotas or other non-tariff import barriers. While Japan and the Nordics wanted specific reduction or elimination of export subsidies, the EC wanted market sharing agreements to discipline export subsidies.

Discussions on technical aspects of the proposals and additional submissions from developing countries during 1988,[9] did not resolve these basic differences. Ministers met at the Montreal

---

[8] Argentina, Australia, Brazil, Canada, Chile, Colombia, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand, and Uruguay are members of the Cairns Group, named after the town in Australia where the group first met.

[9] Progress in the agricultural negotiations between 1987 and February 1990 was detailed in a report presented to Congress on February 15, 1990 as required under section 4301 of the Omnibus Trade and Competitiveness Act of 1988.

Mid-term Review in December 1988 with very divergent views concerning the scope and extent of a reform process.

Insufficient progress in agriculture and the inability to agree on the elements of the reform program ultimately led to a decision at Montreal to put the entire Uruguay Round, including interim agreements in other areas, "on-hold" until this impasse could be resolved. The negotiations in all areas only proceeded when, in April 1989, countries agreed to focus the agriculture negotiations on ways to achieve the "long-term objective of a fair and market-oriented agricultural trading system". The key to breaking the deadlock was agreement by countries to undertake "substantial, progressive reductions in support and protection that would result in correcting and preventing restrictions and distortions in world agricultural markets."

The Mid-term agreement made it clear that:

-- all policies were to be on the negotiating table (i.e., variable levies, quotas, tariffs, domestic price and income support policies, export subsidies, etc.); and

-- the rules and disciplines, and commitments negotiated were to be applicable to all GATT Contracting Parties.

The Mid-term agreement also provided a work program for the remainder of 1989 and included short-term commitments (insofar as they were consistent with domestic legislation) not to increase agricultural support and protection in 1989, and to decrease support and protection in 1990. An important element of the work program was to continue the work within the GATT to develop new GATT rules for sanitary and phytosanitary measures. Progress in this area is reported separately below.

When the negotiations resumed again after the Mid-term Review, the United States elaborated its 1988 proposal to convert all non-tariff barriers to tariffs, including a methodology for such an undertaking. The EC presented additional refinements on its ideas for using an aggregate measurement of support. However, the piecemeal way in which elements of proposals were being elaborated was confusing to many countries. To address this problem, the United States took the lead and presented a comprehensive proposal in October 1989. This action forced other participants to present comprehensive proposals so that participants in the negotiations could evaluate the various elements of the reform program in relation to one another.

Eight comprehensive proposals were submitted by the end of 1989. When countries began submitting concrete proposals as called for in the Mid-term agreement, it became increasingly apparent that fundamental differences still existed about the framework for the reform process, as follows:

-- The United States called for specific reduction commitments for all commodities by all countries in the three areas of the negotiations: trade-distorting internal support, barriers to market access, and export subsidies. In the U.S. proposal, policy-specific commitments would form the basis for reductions in key internal support measures; all non-tariff import barriers in all countries would be subject to tariffication, and all newly-converted and existing tariffs would be reduced to zero or low levels; and all export subsidies and the most trade-distorting internal supports would be eliminated.

-- The Cairns Group proposed a similar framework and a more ambitious reduction schedule than that submitted by the United States.

-- The EC, on the other hand, wanted to focus reductions on internal support, suggesting that this would lead to reductions over time in barriers to market access and the need to use export subsidies. In the EC proposal, reduction commitments would be made for major agricultural products using an aggregate measure of support (AMS). The EC proposal indicated that with the aid of the AMS,[10] any tariffication would allow for tariff increases to offset movements in exchange rates and world prices; deficiency payments would be converted to tariffs; and "rebalancing" would be permitted (e.g., raising GATT-bound duties on products like soybean meal and other non-grain feed ingredients, to offset reductions elsewhere).

-- Japan and Korea supported the use of an aggregate measure to avoid commitments on market access while continuing to emphasize the need for exemptions for food security concerns.

-- The Nordics supported reduction commitments using the aggregate measure of support, including for commitments to reduce export subsidies. For market access, tariffication was accepted but not in all instances.

-- Many developing countries submitted proposals addressing special and differential treatment for developing countries and the concerns of net food importing countries.

---

[10] While the AMS is designed in theory to measure all support to agriculture, it is in practice mainly a discipline on internal support and provides no assurances of cuts in import protection or export subsidies.

The first half of 1990 was spent in intense discussions on the technical features of these proposals. Issues addressed included methodologies for tariffication[11] and for aggregate measures of support, criteria to identify policies not subject to reduction commitments (so-called "permitted" policies), specification of emergency import relief mechanisms (so-called safeguard mechanisms), and the form of reduction commitments on export subsidies (budget expenditures, volumes exported with subsidies, etc.). These discussions resulted in considerably detailed technical understanding of the elements of the various proposals. However, it became increasingly clear that the technical dimensions could not be resolved until all countries agreed on a common framework for the reform process.

Seeking the Political Commitment to Negotiate

While the issue of agricultural reform is a highly technical process, fundamental decisions on the framework required guidance and direction from political leaders, particularly among the industrialized countries. Thus, the United States, Canada, Australia and New Zealand raised the lack of progress on the framework at the May 1990 ministerial meeting of the Organization for Economic Cooperation and Development (OECD). In a highly unprecedented action, the ministers cited in their Communique the differences among the OECD countries on the key problems in agriculture.

By the time the Houston Economic Summit was held (July 9-11, 1990), the Chairman of the Agricultural Negotiating Group (Dutch Director-General for Agriculture Aart deZeeuw), had tabled a framework proposal to complete negotiations. The Chairman's paper called for specific commitments in each of the three pillars of the negotiations (market access, export subsidies and internal support). The paper endorsed the concept of converting all non-tariff import access barriers to tariffs, and called for ambitious reduction commitments in each of the three areas, including expedited reductions of export subsidies. It also reaffirmed the importance of an agreement on sanitary and phytosanitary measures.

At the Summit, President Bush demonstrated the U.S. commitment to the Uruguay Round and sought to engage other Heads of State in a discussion of the problems associated with the successful conclusion of the Uruguay Round, particularly with respect to agricultural reform. World leaders at Houston commended the deZeeuw text to agricultural negotiators who, in late July, agreed to use the text as a means to intensify the negotiations. President Bush received the commitments of the other G-7 leaders to remain personally involved in the agriculture negotiations in order to assure their successful conclusion by the end of 1990.

---

[11] The discussion of methodology issues associated with tariffication, and empirical estimates contained in USITC reports 2276 and 2280 (April 1990), played an important role in demonstrating the technical feasibility of tariffication to other negotiators.

As a result of the Houston Summit and the July 1990 TNC meeting, it appeared that, after nearly four years, a common framework was agreed on which to begin the give-and-take of real negotiations. The last items remaining were specific details about how far and how fast reductions were to be made. Countries agreed to provide this information, in the form of conditional "offers", by October 15. (This was the same deadline agreed for other "offers" in market access to be tabled.)

Despite this agreement, it became clear, as the October deadline approached, that the fundamental issue of the framework for the negotiations had not been resolved. The differences were evident in the various "offers" provided in the negotiations.

-- The United States and Cairns Group followed the deZeeuw text and called for ambitious reductions in each of the three pillars of the reform: a 90 percent reduction in export subsidies; a 75 percent reduction in barriers to market access; a 75 percent reduction in trade-distorting internal support; and an endorsement of the chairman's method for tariffication. Developing country members of the Cairns Group agreed to accept commitments on internal support and market access of about half the rates proposed for developed countries over a longer time period (an extra five years).

-- The EC, after protracted internal debate, tabled its offer on November 7, 1990. The EC proposal ignored the deZeeuw framework while offering a 30% overall reduction in support from a 1986 base (reducing the offer to an effective 15-20 percent). There were no specific commitments on market access or export subsidies; and the tariffication proposal was, in essence, a codification of the EC variable levy system. Rebalancing of soybean meal and non-grain feeds remained a central feature of the proposal.

-- Japan refused to make any new commitments on market access, and limited its proposed reforms to minimal reductions in domestic subsidies for a few commodities.

-- Korea basically exempted 75 percent of its agricultural sector from any kind of reform commitments.

- Nordic countries each submitted separate offers. The proposals called for modest reductions in internal support and comparable reductions in tariff equivalents on border protection, but very significant reduction/or elimination in budget outlays for primary product export subsidies.
- Mexico and Poland followed the deZeeuw framework and offered to make ambitious cuts in all three areas.

Given the complexity of the offers, no comparison, nor negotiation was possible in the absence of a common framework for reform. There were substantial differences in the level and timeframe of the reduction commitments.

Since all countries did not abide by the framework contained in the chairman's text, governments prepared for the Brussels ministerial meeting without a plan to facilitate the negotiation of agricultural reform. At the Brussels ministerial, ministers were expected to decide if they were willing to make the political commitments necessary to achieve fundamental agricultural trade reform.

The Breakdown at the Brussels Ministerial

The United States objective in Brussels was to obtain a solid framework for the reform process--to set in place new GATT rules and discipline that would lead to a market-oriented agricultural trading system; the framework remained the necessary first step.

Fundamental reform was not only a U.S. objective; it was shared by most developing countries and Eastern European countries. Most members of the European Free Trade Association (EFTA)[12] also had indicated a commitment to a fundamental reform process, although there were differences concerning the time frame and the extent of initial reduction commitments.

Minister Gros-Espiell, Foreign Minister of Uruguay and Chairman of the Trade Negotiations Committee, sought the assistance of various ministers to lead negotiations in key areas. Minister Mats Hellstrom, the Swedish Minister of Agriculture, chaired the group that discussed agriculture.

During the first few days in Brussels, Chairman Hellstrom approached governments bilaterally, and it appeared that finally some of the more recalcitrant countries might be willing to accept specific commitments to reform each of the three areas: barriers to market access, export subsidies and internal support.

---

[12] The members of the EFTA are Austria, Finland, Iceland, Norway, Sweden, and Switzerland.

In an attempt to move the process forward, Chairman Hellstrom provided a so-called "non-paper" that can best be described as a skeletal outline of elements for negotiation, that had been, for the most part, identified in the deZeeuw text in July. The Hellstrom "non-paper" called for specific commitments in each of the three areas. The paper also drew from the EC's existing offer and suggested a 30 percent target for reduction commitments, while changing the base year from the EC's suggested 1986 base to a 1990 base.

The Hellstrom paper, while far from perfect, provided the much-needed common framework for negotiations. The United States agreed that the paper could be a useful vehicle to frame the structure of the negotiations. The United States was prepared to negotiate on the duration of the reform process and the depth of the reductions within this agreed framework.

Most other countries also seemed to believe that the Hellstrom paper could be used to start the negotiations. However, Japan, Korea and the EC rejected the paper as the basis for negotiation. Once their positions were fully understood, the negotiations in agriculture broke down completely, and it then became impossible to negotiate further in any of the other negotiating groups. Many developing countries, particularly those in Latin America, questioned the purpose of negotiating further in other areas without the prospect of an agreement in agriculture.

At its final meeting in Brussels, the Trade Negotiations Committee suspended the negotiations, but instructed GATT Director-General Dunkel to pursue consultations with governments and to resume negotiations when a basis for concluding the Uruguay Round could be established. Director-General Dunkel convened the Trade Negotiations Committee in informal session on January 15, 1991, and reported that such a basis had not yet been established, because of the continuing deadlock in agriculture.

Since that time, there have been indications of movement by major opponents of agricultural reform. Korea and Japan have indicated that they are prepared to pursue agricultural reform using a framework that calls for specific commitments in each of the three areas of market access, internal support and export subsidies.

The European Community is undertaking its own serious agricultural reform efforts which are separate from the Uruguay Round negotiations. While that is an internal EC matter, it appears that such reforms, if agreed, could have a positive influence on agricultural reform in the multilateral context.

On February 20, 1991, GATT Director-General Dunkel announced that his consultations had confirmed that "participants agree to conduct negotiations to achieve specific binding commitments on each of the following areas: domestic support, market access, export competition and to reach an agreement on sanitary and phytosanitary issues...". On February 26, the Director-General convened the Trade Negotiations Committee to announce a resumption of the overall negotiations, and a schedule of technical meetings to resume negotiations in agriculture as well as all other areas of the Uruguay Round.

Sanitary and Phytosanitary Measures

At Punta del Este, ministers also recognized that agricultural trade could be hindered by inappropriate application of sanitary and phytosanitary measures. Negotiators were instructed to develop strengthened GATT rules aimed at "minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements."

All countries supported work in this area in their 1987 negotiating proposals, and in the fall of 1988 a separate working group on sanitary and phytosanitary (S&P) regulations and barriers was established. The Mid-term Review agreement set forth principles and a work program to guide the working group, including U.S. objectives that measures taken to protect human, animal or plant life or health be consistent with sound scientific evidence and use suitable principles of equivalency.

Although countries have held different positions concerning the way to implement the Mid-term agreement, negotiators were able to resolve many issues. By the time of the Brussels ministerial meeting, as reflected in the draft Final Act, a basis to conclude an agreement was established representing many areas of consensus.

The draft agreement obligates countries to ensure that health-related agricultural regulations which affect trade are based on scientific principles and not inconsistent with available scientific evidence. The draft agreement provides a mechanism for distinguishing between those S&P measures legitimately protecting health and safety and those which are disguised trade barriers. At the same time, the discipline does not compromise national sovereignty in protecting health and safety. Incentives are created to utilize international standards, although it is recognized that more strict domestic standards could be necessary. In cases where more strict standards are applied, they must not be inconsistent with sound scientific evidence or a chosen level of protection and must be the least trade-restrictive method necessary to achieve the desired level of health and safety. In addition, for the first time, the GATT will contain provisions on the recognition of equivalent measures and disease- and pest-free zones. There is also general support for using the GATT dispute settlement procedures that result from the Uruguay Round for resolving S&P disputes.

Some issues are still outstanding and must be resolved before all brackets can be removed from the draft text. First, the EC continues to support its proposal to include measures relating to the so-called "fourth criterion" (consumer interests and concerns, animal welfare, etc.) in the scope of the agreement. However, it is generally recognized by other participants that it would be virtually impossible to formulate a means for determining the legitimacy of these measures under the concepts embodied in the existing S&P framework. Second, the United States has proposed that the right to maintain national approval procedures for establishing tolerances be ensured in the text. There is support for this concept but disagreement over how far this right should extend; disagreement remains with regard to the right of market access while an approval procedure pending, especially in cases when an international standard already exists.

CHAPTER 4

NEW ISSUES: "TRIPs," "TRIMS," and Services

Section 1101 of the 1988 Act elaborates in great detail U.S. objectives for negotiations with regard to the protection of intellectual property rights, trade-related investment measures (TRIMs) and services. The Uruguay Round negotiations have thus far addressed a substantial portion of the objectives listed in the Act. In accordance with those objectives, the United States has maintained a high level of ambition in the negotiations in each of these areas. In many cases, the issues are interrelated, for example, the provision of national treatment is common to the negotiations in all areas.

Perhaps more than any other area of the Uruguay Round, these negotiations have required, as part of the negotiation, the development of a substantial body of knowledge among trade officials in other governments and private sectors on the importance of these issues to trade. In these negotiations, unlike other areas of trade negotiations on market access and GATT rules, governments for the first time were forced to review domestic policies and regulations in fields not previously covered by international rules, and to assess their implications for trade and economic growth. The Administration, along with the private sector advisory committees and ad hoc private sector coalitions, has achieved substantial progress in establishing the relevance of these issues to trade, thereby laying the foundation for trade agreements in each area.

The draft Final Act does not include a draft negotiating text on investment. Nor is there a complete draft text for services that can be used as a basis to conclude negotiations on the framework, sectoral annexes or market access commitments which are required to conclude agreements that fulfill the objectives of the 1988 Act. However, the negotiations in all three areas have achieved substantial progress beyond what is reflected in the draft Final Act. A majority of countries now agree on the need for strong rules for the protection of intellectual property rights and services, and investment rules that create a positive economic environment free of trade distortions.

Trade-Related Aspects of Intellectual Property Rights (TRIPs), including Trade in Counterfeit Goods

The U.S. International Trade Commission estimated in 1987 that inadequate protection and enforcement of intellectual property rights abroad causes annual losses for U.S. intellectual property interests of $43 billion to $61 billion.

The specific causes of these losses are numerous. For example, a number of countries flagrantly encourage or allow their nationals to use foreign-owned inventions without adequately compensating the inventor. Many countries do not provide for product-based patents in areas such as chemical compounds, pharmaceuticals and biotechnology. While they may provide process patent protection, it is often ineffective. Some countries provide only limited copyright protection for works such as books, motion pictures, computer programs and sound recordings. In some cases domestic copyright laws do not protect foreign works. Many nations require that trademarks be used in commerce as a condition for maintaining ownership rights, despite the fact that the countries' trade policies make such use impractical or impossible.

Even where countries have adequate intellectual property laws, piracy still thrives because of inadequate penalties or a lack of government commitment to enforcing the rights guaranteed by law.

While there are a number of existing international intellectual property conventions, the standards contained in them are weak, especially in the patent area. For example, a country can be in full compliance with international conventions even though it may not provide any protection whatsoever for entire classes of products, such as chemicals, pharmaceuticals and biotechnologies. In addition, countries can grant patents for as little as five years and still meet the standards of current international conventions. Such unreasonably short patent terms do not provide the inventor an adequate opportunity to recoup research and development costs.

The value of intellectual property rights of U.S. nationals is also diminished by a variety of other practices that are nonetheless consistent with international conventions. Among these are unreasonable working requirements and compulsory licensing policies that fail to provide prompt, adequate and effective compensation. Efforts in recent years to renegotiate the conventions to improve standards of protection have encountered concerted efforts by many nations to weaken standards even further.

Many new and still emerging technologies, such as semiconductor chips, software and biotechnologies, either are not explicitly covered or are discriminated against by international conventions, and they are constantly in danger of not being protected under national laws. Finally, the dispute settlement and enforcement mechanisms of existing conventions are ineffective.

U.S. industries dependent on intellectual property protection turned to the GATT in 1985 out of frustration: frustration with existing international intellectual property treaties, and frustration with our inability to negotiate improvements in these treaties through the World Intellectual Property Organization (WIPO), the United Nations agency charged with their administration. U.S. industry efforts have been critical to building support outside the United States for a GATT intellectual property agreement.

U.S. companies have argued vigorously for GATT negotiations on intellectual property since 1985. In the fall of 1985, our Advisory Committee on Trade Negotiations created a Task Force on Intellectual Property. The Task Force drafted two sets of recommendations, forwarded to U.S. Trade Representative Clayton Yeutter in the fall of 1985 and the spring of 1986. Those recommendations became the foundation for the U.S. position at Punta del Este. Since that time, the task force has been very active in eliciting support from the EC and Japanese business communities for TRIPs negotiations.

The U.S. GATT Objective

The Uruguay Round provides an opportunity to make substantial progress on trade-related intellectual property matters. The U.S. approach is to seek a comprehensive, enforceable and binding agreement on trade-related intellectual property rights that will substantially reduce trade distortions associated with deficiencies in protection and enforcement of those rights in foreign countries. From the U.S. perspective, the agreement should include four elements:

- Standards of protection that each country should embody in its laws on patents, copyrights, trademarks, trade secrets and semiconductor lay-out designs.

- Enforcement provisions that specify how intellectual property rights holders should be able to enforce their rights internally and at the border through legal action.

- A mechanism for settling disputes between governments along the lines of traditional GATT dispute settlement procedures.

- The ability to apply trade sanctions when a country is failing to live up to its obligations under the agreement.

The TRIPs Negotiation to Date

The TRIPs negotiation can be divided into four phases. In the first phase, from September 1986 to April 1989, discussions focused on the scope of the negotiating mandate, i.e., which intellectual property matters were appropriate for negotiation in the trade forum of the GATT. In this regard many developing country participants insisted that the TRIPs negotiations should be strictly limited to the trade-related aspects of intellectual property issues, narrowly defined in their view to include only border enforcement of trademark counterfeiting and copyright piracy. These countries argued that issues such as setting standards for protection, and internal enforcement regimes, were outside the purview of the negotiating mandate and outside the competence of the GATT. This phase of the negotiations ended with a Mid-term Review agreement by the Trade Negotiations Committee (TNC) in April 1989 on a clarified negotiating mandate for the TRIPs group which encompassed both sets of U.S. objectives: negotiation of substantive standards in all areas of intellectual property, and negotiation on enforcement of intellectual property rights both internally and at the border.

The second phase of the TRIPs negotiations, from April 1989 to early 1990, consisted of identifying the specific concerns of countries about deficiencies in the protection and enforcement of intellectual property rights. Throughout this period, many countries tabled papers outlining their specific objectives in the negotiations. The United States, along with the EC, Japan and a number of other countries, identified a broad range of issues covering all fields of intellectual property. Developing countries continued to insist that only trademark counterfeiting, and perhaps copyright piracy, were appropriate for GATT action.

The third phase of the negotiations, from early 1990 to June 1990, consisted of the submission by participants of specific negotiating proposals in the form of draft legal texts. Draft legal texts were tabled by the United States, Japan, the European Community, Switzerland, and a group of 14 developing countries. While all of these texts addressed a broad range of issues covering substantive standards and enforcement, the four developed country proposals set forth a higher level of obligations for a broader range of issues than did the developing countries' proposal.

The fourth phase of the TRIPs negotiations, from June 1990 through the Brussels ministerial meeting, consisted of the elaboration of a common text based on the five negotiating texts referred to above, and intensive negotiations on that common text. During this period, the TRIPs negotiating group resolved numerous technical and drafting issues, but a number of the key substantive issues remained to be resolved when the text was forwarded to ministers in Brussels.

The text forwarded to ministers reflects significant progress in the negotiations. Although many issues remain unresolved, most of the issues of importance to the United States are included in the text forwarded to ministers. That text provides for national treatment and non-discriminatory treatment of intellectual property rights-holders. It includes provisions on protection of copyrights, patents, trademarks, trade secrets, industrial designs, geographic indications and integrated circuits. A majority of these provisions are agreed, although a number of important issues remain. The text also includes extensive provisions on enforcement, both internally and at the border, which are generally agreed.

Consistent with advice from Congress and the private sector, U.S. negotiators have worked to limit the changes to U.S. law that could be required by a TRIPs agreement. This position has proved difficult to maintain as our trading partners, primarily the EC and Japan, have used this negotiation to seek major changes in U.S. law.

Some of the major issues which are not yet resolved include:

Copyright: whether to include provisions additional to the economic rights granted by the Berne Convention; the extent of protection for computer programs; whether to include rental rights and for what category of works; and whether to include protection for performers, broadcasters and sound recordings.

Trademarks: whether to allow countries to require use of a local trademark in combination with a foreign trademark as a requisite for protection.

Geographical Indications: whether to provide special protection to wine and perhaps spirits; how to safeguard existing trademarks and names that might conflict with geographical indications.

Industrial Designs: whether the standard of protection should be based on protection currently given in the United States or in Europe.

Patents: which exceptions to patentability are to apply; what the term of protection should be; which conditions should apply to compulsory licensing; and whether to include protection for pharmaceuticals.

Lay-out Designs for Integrated Circuits (Semiconductor Chips): Whether the protection should be based on the Washington Treaty and which provisions should be modified for purposes of TRIPs.

Trade secrets: whether to include provisions in this area, and if so, whether to apply the enforcement provisions to them.

Chronology of Intellectual Property Legislation

The importance of intellectual property protection as a matter for trade legislation has greatly increased during the past decade, as the following chronology makes clear:

1978	U.S. Customs law was modified to reflect U.S. proposals for a GATT anti-counterfeiting code.
1981	Senate introduced "reciprocity" bills including provisions on the denial of fair and equitable provision of adequate and effective protection of intellectual property rights.
1983	Caribbean Basin Economic Recovery Act requires that the President, in designating beneficiary countries, take into account the extent to which adequate and effective intellectual property protection is provided and the extent to which unauthorized broadcast of copyrighted materials, including films and televised materials, is prohibited.
1984	Trade and Tariff Act of 1984 clarifies coverage of intellectual property protection under section 301 of the Trade Act of 1974, as amended, together with intellectual property considerations for granting GSP benefits and annual reporting on barriers to market access (including property rights protected by patents, trademarks and copyrights exported or licensed by U.S. persons).
1988	Omnibus Trade and Competitiveness Act of 1988 contains intellectual property provisions in negotiating objectives for the Uruguay Round, special provisions for section 301, modifications to section 337, and enhancement of the link between intellectual property protection and international science and technology agreements and amendments on patent term extension and process patents.

Trade-Related Investment Measures (TRIMS)

Prior to the launch of the Uruguay Round negotiations in 1986, the United States urged its trading partners to include all aspects of investment, including problems related to direct investment and the provision of national treatment, in the multilateral trade negotiations on investment. The United States succeeded, along with a number of developed countries, in obtaining agreement at Punta del Este to include "trade related investment measures" (TRIMs) as one of the negotiating issues in the Round. The negotiating mandate stated that the Contracting Parties should investigate the extent to which investment measures imposed by governments on firms could have trade distorting effects and then determine how such effects should be disciplined, including through "elaboration" of GATT Articles. Negotiators have been successful thus far in keeping the work on TRIMS as broadly focused as possible. This is in keeping with the broader objectives outlined by the Congress in the 1988 Act. Other investment-related issues, such as the right of establishment and national treatment, are addressed in the services negotiations.

Progress has been deliberate in the development of a TRIMs agreement. Advocates of an agreement have had to build a base for establishing an agreement on TRIMs. With the assistance of the private sector, the United States submitted four papers in the negotiations, reviewing the relationship of existing GATT provisions to TRIMs and exploring what other provisions might be necessary to strengthen GATT articles. The first formal U.S. negotiating text was not produced until mid-1989.

The Mid-term Review discussions on TRIMs were not highly contentious. U.S. negotiators, in consultation with the private sector, determined that the more prudent course would be to press for a high quality agreement by fully debating the issues rather than pressing for an early negotiating text that would not provide an adequate basis for concluding an agreement in line with U.S. objectives.

The discussions through the course of the negotiating group's 22 formal negotiating sessions reflected two different approaches to achieving an agreement in accordance with the Punta del Este mandate. The developed countries, including in particular the United States, Japan, the EC, the Nordic countries, Switzerland, Canada, and New Zealand, advocated prohibition of investment measures that contravened either the letter or the spirit of GATT, including local content requirements, trade balancing requirements, export performance requirements, export restrictions and foreign exchange restrictions. They also advocated an "effects test" which would lead to prohibition of other investment measures which were shown to have a trade-distorting effect.

Developing countries, led especially by India, Egypt, Brazil and the Philippines, argued that the Punta del Este mandate focused only on the effects of the measures, rather than the measures themselves. These developing countries believed a determination should be made on a case-by-case basis as to whether a specific measure had adverse effects on another contracting party; if so, the offending contracting party should only be required to ameliorate those effects rather than eliminate the measure in question.

This fundamental difference in approach persists to the present. However, during the course of the negotiations, an increasing number of developing countries indicated a willingness to accept the concept of prohibition, especially for those measures -- such as local content and trade balancing requirements -- that are clearly inconsistent with either the national treatment obligations of GATT Article III or the quantitative restriction prohibition of GATT Article XI.

This growing consonance of views led to the development of a text for a TRIMs agreement that was submitted to the Trade Negotiating Committee (TNC) in October 1990. The text, while heavily bracketed, included a definition of TRIMs, prohibition of export performance requirements, a confirmation of the prohibition of TRIMs under relevant GATT articles, an effects test to discipline other TRIMs, reaffirmation of current GATT rules providing for possible developing country exceptions to these disciplines, a transition period for phasing out prohibited measures, transparency provisions, and the creation of a TRIMs Committee within GATT to oversee the agreement and provisions for future work.

While the United States and the majority of other developed and developing countries were willing to accept this text as the basis for negotiation at the political level in Brussels, a few developing countries were able to block the consensus necessary to submit the text for consideration at Brussels. They were also able to prevent a second draft text, a greatly simplified version, from being submitted to ministers at Brussels. However, trade ministers in Brussels did consult informally about the prospects for a TRIMs agreement and necessary elements. Had the negotiations in Brussels continued, it is quite likely that a basis to conclude an agreement would have emerged.

There have not been additional negotiations on TRIMs since the Brussels ministerial meeting. However, the U.S. negotiating team has met extensively with the private sector and the Investment Policy Advisory Committee to review developments in preparation for a resumption of the talks. The Administration is aware of increasing private sector support in and interest for a TRIMs agreement since the Brussels ministerial meeting.

The majority of developing countries appears willing to accept effective disciplines on TRIMs, in large part because they are increasingly interested in attracting foreign capital and are aware that TRIMs are a significant disincentive to direct investment. They are also increasingly aware of their own stake in multilateral trade discipline. However, they are sensitive to the fact that, unlike many of the other issues addressed in the Round, a TRIMs agreement contains only rules without, from their point of view, any immediate and visible offsetting concessions on the part of developed countries. As the content of the agreements in other areas becomes clearer, it is likely that negotiations on TRIMs will gain momentum and that an agreement that achieves key U.S. objectives, consistent with the 1988 Act, and the Punta del Este mandate, will be reached.

Services

Trade in services in the past decade has played an increasingly prominent role in international trade. Services trade accounts for approximately 25 percent of total world trade. It accounts for nearly $90 billion in U.S. exports, 60 percent of U.S. output and 90 percent of the new jobs created in the United States since 1980. As a result of this growing importance and the potential for increased trade friction in the absence of agreed multilateral rules, the United States in the early 1980's pressed for inclusion of services on the agenda for a new round of trade negotiations.

U.S. efforts to bring services under the GATT's purview date back to the 1982 GATT ministerial meeting where the United States made initial attempts to build a consensus in support of an eighth round of multilateral trade talks. The United States persevered in its efforts to focus trade negotiators' attention on services trade issues, over the objection of the developing countries led by Brazil and India. This opposition continued through subsequent phases of work sponsored under GATT auspices from 1982 until the launch of the Uruguay Round in 1986. This work involved primarily the exploration of trade issues in services and the development of national governments' studies on services.

Important analytical work resulted from the GATT work program from 1982-1986, leading to additional support for a services agreement. Developing countries, with the exception of a few, started to consider services as vital to their own economic growth. Some of the countries that formerly were the most vigorous opponents of a services agreement, Brazil and to a certain extent India, are now constructive participants in the negotiations.

Although services has a long history in discussions related to the development of a negotiating agenda for the Uruguay Round, when the Uruguay Round was launched in 1986 discussions did not have the benefit of well-established trade principles specific to services. Preliminary discussions on services began in the Organization for Economic Cooperation and Development (OECD) among the industrialized countries in the early 1980's. Extensive OECD work was completed on potential issues related to a framework of rules in services and related sectoral issues.

At Punta del Este, agreement to a negotiating mandate for trade in services was among the last of the issues resolved by trade ministers. The agreement called for negotiations:

> ...[to] establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization...

U.S. Objectives for a Uruguay Round Services Agreement

In keeping with the 1986 Punta del Este mandate and the subsequent negotiating objectives established in the 1988 Act, the U.S. objectives have been to:

- establish a legally binding and enforceable set of rules and obligations to govern trade in services;
- assure the widest possible coverage of such an agreement in terms of sectors and participants, particularly developing countries;
- develop, as necessary, any sectoral annexes or annotations required to address the peculiar nature of certain services sectors;
- expand, through the agreement, market access opportunities for U.S. service providers, particularly through an obligation to provide national treatment;
- remove foreign barriers to trade in services;
- prevent governments from interfering in services trade through discriminatory and burdensome regulations; and
- ensure transparency in the way that countries administer their services laws and regulations.

Preparations for the Mid-term Review

The first two years of negotiation addressed the main issues to consider in pursuing the negotiating mandate. These issues are summarized below to indicate the starting point for the negotiations and the complexity of the subject matter. They were: (1) definitional and statistical issues; (2) broad concepts and principles and rules for the framework agreement on trade in services, including possible sectoral disciplines; (3) possible coverage of the agreement; (4) existing international rules and disciplines; and (5) existing barriers to services market access and how to achieve their progressive liberalization.

The main focus of the services negotiation was on developing a legal framework of rights and obligations related to trade in services, similar to the GATT rules that govern trade in goods. Most countries were reluctant to launch discussions about individual services sectors before achieving substantial progress, or reaching agreement, on the framework of rights and obligations.

During this period, a number of developing countries, still reluctant to negotiate on services and disappointed with the pace of progress in other areas of the negotiation, continued to question the need for liberalization of services trade. They argued that developing countries should be assured the benefits of a services agreement without accepting any of its obligations. Developing countries pressed for inclusion of preferential market access concepts, rules on restrictive business practices and rules governing the transfer of technology. At the same time they argued against the acceptance of commitments, during the Uruguay Round, to provide national treatment or market access to foreign service providers.

In consultation with the Congress and private sector advisors, the Administration prepared a conceptual proposal on a framework for trade in services which was submitted in October 1987. This was quickly followed by other proposals on specific articles and principles for the framework. With the four year timeframe of the Uruguay Round negotiations in mind, the United States sought to have agreement on a framework at, or shortly after, the Mid-term Review meeting in December 1988. This would have assured adequate time for negotiations on both the framework and specific commitments by governments before the Round concluded in 1990. While progress was achieved in developing the framework, the complexities of the issues and pace of progress in the Uruguay Round negotiations overall made it impossible to meet this ambitious negotiating schedule.

A breakthrough was achieved on the framework at the Mid-term Review in Montreal when ministers agreed that "concepts, principles and rules relevant to the services framework should be: transparency, progressive liberalization, national treatment, MFN/non-discrimination, market access, increasing participation of developing countries, safeguards and exceptions, and the regulatory situation." Ministers also set an ambitious work program calling for (1) testing the relevance of these principles and concepts against specific sectors, (2) tabling indicative lists of sectors of interest to countries, and (3) completing a draft of the framework text by the end of 1989. The Mid-term agreement also recognized that the eventual acceptability of the framework and its implementation would be dependent upon the "initial level of negotiated commitments," to begin the process of progressive liberalization called for in the Punta del Este declaration.

Progress Since the Mid-term Review

Work on the services framework progressed throughout 1989. After substantial review and consultation, the United States tabled a draft legal text for a services agreement in the fall of 1989. While work continued on the framework, however, the pace was dictated in part again by the pace of progress in other areas of the negotiation, particularly agriculture and the market access negotiations.

In order to review sectoral issues, as agreed at the Mid-term Review, working groups were established to address transport (water, air and land transport), professional services, audio visual services, construction and engineering, telecommunications, financial services, labor mobility and tourism. The groups evaluated draft framework articles and issues unique to certain sectors that needed to be addressed. As a result of this process, annexes on financial services, telecommunications, audio visual, labor mobility and all transport sectors are under active consideration; other annexes may yet emerge before the end of the negotiations.

The United States envisioned a rules-based agreement that imposed a series of obligations automatically on governments with respect to covered sectors including the provision of national treatment and market access unless explicitly reserved. Other governments were not willing to undertake such ambitious commitments. Thus, the negotiation of the framework agreement proceeded in the direction of developing a more limited category of obligations automatically applicable (e.g., transparency) imposed on all signatories, with commitments to provide market access and national treatment to be negotiated separately on a country-by-country basis.

Some countries continued to argue that it should be sufficient to agree on the narrower set of obligations and leave negotiations on specific market access and national treatment commitments to a subsequent negotiating round. The United States objected to such a scenario for a Uruguay Round agreement. Accordingly, in June 1990, the United States sought to shift the direction of the negotiations by focusing concurrently on the framework and market access commitments. The United States tabled requests for specific market access commitments to 40 countries in an effort to begin negotiation on initial commitments.

In October 1990, Switzerland, mindful of the importance of engaging in market access negotiations, proposed that all countries provide "conditional offers" in order to begin negotiations on initial commitments, as required by the agreement reached as a result of the Mid-term Review. By the time of the Brussels ministerial meeting, only the United States, Switzerland, and Japan had tabled such "conditional offers." Some countries were working on offers, while others argued against conducting market access negotiations until the framework was fully agreed.

Developments at the Brussels Ministerial Meeting and Beyond

The United States is not yet satisfied with the draft framework agreement on services as contained in the draft Final Act and believes that it requires further refinement and negotiation. One serious omission is an agreed negotiating basis for the financial services annex, which is under discussion informally. This view is shared by the majority of participants in the negotiations and our respective private sectors. Part of the concerns with the framework stem from the differences in approach to the negotiations, as discussed above.

The issue that received the most attention in Brussels -- and that resulted in the greatest progress -- was the linkage between a general rule of most-favored nation treatment (MFN) and market access commitments by specific countries. The United States agreed with other countries that MFN treatment is a fundamental principle that should be included in a multilateral services agreement. The United States pointed out, however, that including an MFN requirement without providing strong market access commitments would produce unbalanced results.

In the absence of substantial market access commitments from all participants, the United States argued, an MFN obligation would effectively require countries with open markets to keep them open, while allowing nations with closed markets to remain closed. Thus, in Brussels, the United States insisted that no agreement that would include a general MFN provision could go forward until countries had exchanged satisfactory liberalization commitments. In addition, the United States reiterated that no country should be required to apply the services agreement, in whole or in part, to any nation that had undertaken inadequate commitments.

At the same time, the United States continued to point out the need to tailor an MFN obligation to the exigencies of specific service sectors. Because few countries are able to provide MFN treatment in all sectors, the United States observed that participants should be prepared to be flexible in the application of MFN to particular services. Specifically, the United States made clear that special rules would be required for the maritime and aviation transport and telecommunications sectors as well as for the treatment of financial services.

U.S. arguments on the link between MFN and market access commitments gave much needed impetus to negotiations on specific liberalization commitments. In Brussels, five major trading countries and the European Community tabled market access offers. Since the Brussels meeting, the United States has continued to push for market access commitments, with considerable results. To date, 17 countries and the EC have tabled market access offers; other major trading countries, both developed and developing, are expected to table offers during the next few weeks.

The United States has now initiated face-to-face market access negotiations with many of our key trading partners. The start of those negotiations and the expanding list of countries that have tabled offers indicate our trading partners now fully recognize that market access negotiations must proceed in parallel with the completion of the framework and its annexes. (See Table 5 for the list of countries that have submitted offers to date.)

Outstanding Sectoral Issues

It has become apparent in the course of the negotiations that certain sectors will require individualized treatment, either in annexes or in the framework itself. The Administration has consulted closely with relevant U.S. industries on these issues.

Transportation. The U.S. maritime and aviation industries have consistently expressed concerns about inclusion of maritime and aviation services under a multilateral services agreement. A network of bilateral agreements currently regulates all aspects of aviation services, making application of the most-favored nation principle particularly inappropriate. The maritime industry believes its only effective leverage to open foreign services markets is the use of domestic legal measures that have been available to the United States for some time and that are not prohibited by any international agreement, thus creating an equally difficult MFN problem. Other countries participating in the services negotiations share concerns about the feasibility of applying all the rules of the agreement to the transport sectors.

Telecommunications. The United States, with the support of the U.S. industry, is seeking liberalization of trade in telecommunications services other than basic. There is significant concern in the United States about applying an MFN obligation to basic telecommunications services, e.g., telephone or telex services. Most countries outside the United States do not permit foreign competition in the provision of basic telecommunication services. Given this asymmetry in market access, a commitment not to discriminate among foreign suppliers could restrict options available to the United States to encourage others to open their markets. In the U.S. view, an MFN obligation should not apply in the sector until other countries open their markets to U.S. telecommunications.

Audiovisual services. Certain countries have proposed an exception from MFN treatment for various audiovisual services, including television broadcasting, films, and sound recordings. Such countries typically have in place quotas and discriminatory arrangements designed specifically to protect domestic industries from U.S. competition. The United States continues to oppose a "culture" exception for those industries and to seek a services agreement that opens foreign markets in these sectors.

Financial services. During the final year of the negotiations considerable progress was made in drafting an annex dealing with significant issues related to financial services. Unfortunately, disagreement among developed and developing countries precluded formal transmission of a draft annex to Brussels for ministerial consideration along with the other services texts contained in the draft Final Act. Sweden, Canada, Japan, and Switzerland formally submitted a draft financial services text to the Trade Negotiations Committee at the Brussels ministerial meeting. The United States and EC expressed general support for the approach taken in the text. The draft has been the subject of further consultations and discussions, including with the U.S. financial services industries. The industry has maintained that it is important to maintain a high level of ambition in the annex to assure maximum liberalization even at the risk of achieving less than full participation in the annex at the end of the day.

Labor Mobility. The issue of labor mobility in a services agreement and its relationship to immigration laws has been an issue from the start of the Uruguay Round negotiations. Developing countries argue that this is critical to establishing a degree of "symmetry" in the negotiations and is related to their comparative advantage in services. It is, however, clearly understood by all participants that the eventual agreement will not affect in any way regulations dealing with permanent immigration. The United States, with the support of virtually all the industrialized countries, has made it clear that the framework and its schedule of commitments will not exceed existing statutory limitations on the temporary movement of foreign personnel. The U.S. "conditional offer" on initial commitments specifically identifies those categories where it is prepared to "bind" the current U.S. statutory procedures related to the entry of foreigners on a temporary basis. This offer is fully consistent with U.S. law and regulations.

Summary

A number of outstanding issues remain to be resolved in the services negotiations. Further work is required in specific areas in order to achieve a successful agreement, including:

- Resolution of problems in four sectors (aviation, maritime, basic telecommunications and audiovisual services), including agreement on a framework that resolves the problems related to these sectors.
- Agreement on annexes on financial services and telecommunications services.
- Specific market access commitments by all parties.
- Agreement on the relationship between the negotiated results in services and the other Uruguay Round results.

Finally, through the course of negotiations, the United States and the increasing number of other advocates of a services agreement have had to address claims that the GATT as an institution lacks the legal competence to address services. This is a position that some developing countries still maintain, although the issue has decreased substantially in importance as the Round has progressed. This will be a subject to be considered at the conclusion of the negotiations, as provided for in Part III of the Punta del Este Declaration.

CHAPTER 5

IMPLEMENTATION OF THE URUGUAY ROUND RESULTS

Trade Negotiations Committee document MTN.TNC/W/35/Rev.1 contains all the texts under consideration in the Uruguay Round negotiations. The document was provided in the form of a draft "Final Act" embodying the results of the Uruguay Round, with draft agreements from the various negotiating groups appended. The texts of agreements require substantial additional work and legal drafting. In addition, decisions will have to be made on the form that certain agreements will take, i.e., whether they will be amendments to the GATT, agreed interpretations of GATT articles, etc. To date the negotiating groups have made the substance of the agreements the primary issue for negotiators to address, rather than to engage in a premature debate on procedures for implementation.

Before concluding negotiations participants also must complete work on the Final Act that will conclude the Round, amd decide how (and when) the results of the Round will be implemented.[13] Related issues include proposals to establish a new and improved organization, definitive application of the GATT (and termination of the "grandfather clause"), and the future status of the Tokyo Round "Codes".

The Uruguay Round, from the start, was intended by its participants to be different from the last round of multilateral trade negotiations, the Tokyo Round.[14] In the Punta del Este Declaration, Ministers acknowledged that "the launching, the conduct, and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking". All important trading countries have participated actively since the beginning of the talks and developing countries have played an important role in shaping the agreements under negotiation. Accordingly, the United States expects that all those having a say in the final Uruguay Round package of agreements will be required to accept and implement the full package.

---

[13] The Punta del Este Declaration divides the Uruguay Round negotiations into Part I (goods) and Part II (services). It provides that ministers, meeting on the occasion of a special CONTRACTING PARTIES session, shall decide regarding the international implementation of the respective results.

A central objective for the United States in the negotiations has been the acceptance and implementation by all Uruguay Round participants of all the agreements which result from the negotiations. Tied inseparably to this objective is the denial of trade benefits to "free riders" that receive benefits of trade agreements without assuming obligations, and a transition toward a single set of rules rather than the current multilateral system of widely disparate levels of obligations among contracting parties.

The United States has taken the position that this objective can best be realized through the use of a Single Protocol to end the Round -- wherein participating governments are faced with an "all or nothing" approach to acceptance of the Round's results. There are several alternatives to achieving this end; however, it is clear that the results of the Round can only be implemented if a threshold level of acceptance has been realized.

Finally, at the appropriate time, governments will have to consider whether and how to change the current institutional arrangements for the GATT. A number of countries have suggested that the GATT be formally strengthened through the creation of a new organizational structure which would further enhance the GATT as an international institution. The United States has indicated its interest in such proposals but has suggested that the substantive results from the agreements should determine and precede any additional improvements to the organization.

---

[14] The Tokyo Round ended in 1979 with an "a la carte" approach to the acceptance and implementation of the agreements resulting from the negotiations. The "Proces-Verbal" that concluded the Tokyo Round gave each government the ability to decide which of the agreements (codes) it wished to accept and implement. As a result, the GATT system today is characterized by varying levels of obligations among countries, with some governments participating as signatories to all agreements and others, particularly developing countries, having signed few or none of the codes but enjoying the benefits of most codes. This approach was unavoidable due, in part, to the fact that the major participants in the negotiations were developed countries. Moreover, most developing countries did not actively participate in the drafting of the agreements laid out in the Proces-Verbal. Their limited participation in the Tokyo Round is in sharp contrast to the Uruguay Round, where developing countries have taken an active part overall.

CHAPTER 6

OTHER ISSUES

Worker Rights

The Omnibus Trade and Competitiveness Act of 1988 established negotiating objectives for the United States with respect to the provision of worker rights. Specifically, the statute states that the principal negotiating objectives of the United States regarding worker rights are:

A) to promote respect for worker rights;

B) to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

C) to adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.

Passage of these objectives in 1988, two years after the Uruguay Round negotiations were launched, reflects the continuing U.S. interest in the relationship between worker rights and trade. The members of the Labor Advisory Committee (LAC), working closely with the Administration, pursued this issue in meetings with foreign delegations in Punta del Este, at the Mid-term Review in Montreal, in consultations in Geneva and at the most recent Brussels ministerial meeting.

The Administration had sought formal inclusion of worker rights as a specific agenda item in the Uruguay Round by submitting a proposal to the GATT Preparatory Committee in June 1986. Despite repeated attempts to build the necessary consensus to include this in the ministerial mandate, the majority of countries remained opposed to its inclusion as a subject for negotiation. Accordingly, worker rights is not reflected in the Punta del Este Ministerial Declaration.

Prior to the Punta del Este meeting, the U.S. proposal met with strong and emotional opposition from the developing countries. They viewed the proposal as a means to introduce additional trade restrictions or to deny their legitimate comparative advantage in production of labor-intensive goods. No developed country supported the inclusion of this issue in the negotiating mandate either. Countries suggested that the GATT was not the right forum to discuss worker rights issues. Discussion of worker rights during the work of the Preparatory Committee evoked highly emotional and political responses not generally seen in the GATT.

At Punta del Este, U.S. negotiators, working with the Labor Advisors, pressed the issue at the ministerial level. Even though worker rights was not included in the negotiating mandate, the Chairman noted in his closing statement that there were certain issues raised by delegations on which a consensus to negotiate could not be reached at that time. These issues included the export of hazardous substances, commodity arrangements, restrictive business practices, and worker rights.

After the Round was launched, the United States continued its efforts to focus attention on worker rights in the GATT and to develop the needed consensus. At the October 1987 GATT Council Meeting, the United States requested the formation of a GATT Working Party to study the relationship between internationally-recognized labor standards and international trade. This has been a continuing item of consultation and discussion at GATT Council meetings. Opposition continued to block formation of the proposed working party.

In 1989, in an effort to resolve this outstanding request, GATT Director-General Dunkel proposed to initiate a short-term joint GATT - ILO (International Labor Organization) study. Despite extensive consultations, this too met with strong opposition and the necessary consensus to proceed was blocked.

The initial U.S. proposal for a working party drew on the relationship between trade and worker rights. The United States sought to address: 1) freedom of association; 2) freedom to organize and bargain collectively; 3) freedom from forced or compulsory labor; 4) minimum employment age for children; and 5) minimum work condition standards.[15]

In more recent working party proposals forwarded to the GATT Council, the United States focused on the issues more broadly recognized as fundamental worker rights: (1) freedom of association; (2) the right to organize and bargain collectively; and (3) freedom from forced or compulsory labor. The United States submitted its proposal for a working party at the October 1990 GATT Council meeting, after additional consultations. Reactions were less negative, but a consensus has not yet emerged for a GATT working party. The United States is continuing its efforts to pursue worker rights in the GATT, in accordance with the objectives in the 1988 Act.

---

[15] These standards are reflected in the Trade and Tariff Act of 1984, PL 98-573, §503.

Import Fee for Trade Adjustment

In accordance with section 1428 of the Omnibus Trade and Competitiveness Act of 1988, the United States sought to engage Uruguay Round participants in negotiations that would result in agreement to permit countries to impose a small uniform fee (not more than 0.15 percent) on imports, to fund programs that assist firms in their adjustment to import competition. The United States tabled a proposal to allow for the imposition of a such a fee in October 1989 in the Uruguay Round Negotiating Group on GATT Articles. No other delegation supported the U.S. proposal. Participants viewed the proposal as an attempt by the United States to raise trade barriers and considered it as contrary to the trade-liberalizing objectives of the Uruguay Round.

On August 23, 1990, the President determined that unilateral imposition of a small import fee to fund programs to assist adjustment to import competition would not be in the national economic interest. This decision was based on the view that imposition of the fee would have a negative impact on the Uruguay Round, could require the United States to compensate its trading partners or be subject to retaliation, and could encourage our trading partners to impose similar but more trade-restrictive measures.

TABLES AND BACKGROUND DOCUMENTS

Table 1: Uruguay Round Negotiating Structure

Table 2: Countries Participating in the Uruguay Round

Table 3: Countries that Have Submitted Offers of Market Access for Goods

Table 4: Overview of Market Access Offers for Goods

Table 5: Countries that Have Submitted Initial Offers of Market Access for Services

Attachment A: Ministerial Declaration Launching the Uruguay Round at Punta del Este, Uruguay, September 20, 1986

Attachment B: Uruguay Round Negotiating Plans, adopted January 27, 1987

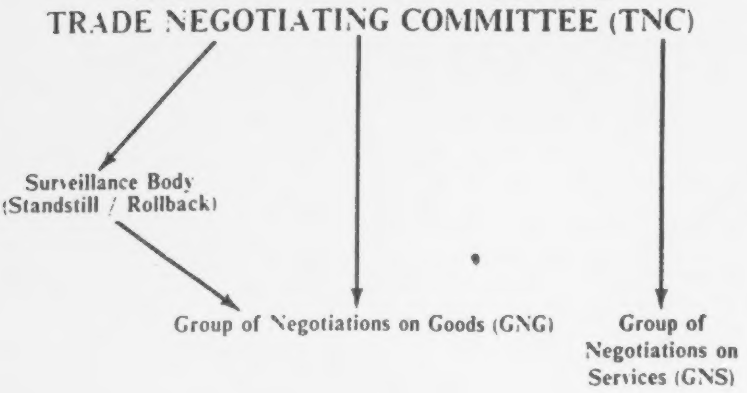
Attachment C: Mid-term Review Agreements, April 1989 (MTN.TNC/11)

Attachment D: Draft Final Act (MTN.TNC/W/35/Rev.1)*

* This 392-page document is being submitted to the President of the Senate and the Speaker of the House of Representatives as Attachment D to this report. Due to the considerable length of that document, only a limited number of copies are available from the Office of the U.S. Trade Representative, Office of Public Affairs.

Table 1

URUGUAY ROUND STRUCTURE


TRADE NEGOTIATING COMMITTEE (TNC)
Surveillance Body (Standstill / Rollback)
Group of Negotiations on Goods (GNG)
Group of Negotiations on Services (GNS)

1. Tariffs*
2. Non-Tariff Measures*
3. Natural Resource Based Products*
4. Textiles and Clothing*
5. Agriculture
6. Tropical Products
7. GATT Articles
8. MTN Agreements and Arrangements
9. Safeguards
10. Subsidies and Countervailing Measures
11. Intellectual Property Rights
12. Trade Related Investment Measures
13. Dispute Settlement
14. Functioning of the GATT System

---

* Indicates "Market Access Groups".

Table 2

COUNTRIES PARTICIPATING IN THE URUGUAY ROUND

**Algeria
*Antigua & Barbuda
Argentina
Australia
Austria
Bangladesh
Barbados
Belgium
Belize
Benin
*Bolivia
*Botswana
Brazil
Burkina Faso
Burundi
Cameroon
Canada
Central African Rep.
Chad
Chile
**China
Colombia
Congo
*Costa Rica
Cote d'Ivoire
Cuba
Cyprus
Czechoslovakia
Denmark
Dominican Republic
Egypt
**El Salvador
**Fiji
Finland
France
Gabon
Gambia
Germany
Ghana
Greece
Guyana
**Guatemala
Haiti
**Honduras
Hong Kong
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Kenya
Korea, Rep.
Kuwait
*Lesotho
Luxembourg
*Macau
Madagascar
Malawi
Malaysia
Maldives
Malta
Mauritania
Mauritius
Mexico
*Morocco
Myanmar
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Pakistan
**Paraguay
Peru
Philippines
Poland
Portugal
Romania
Rwanda
Senegal
Sierra Leone
Singapore
South Africa
Spain
Sri Lanka
Suriname
Sweden
Switzerland
Tanzania
Thailand
Togo
Trinidad & Tobago
*Tunisia
Turkey
Uganda
United Kingdom
United States
Uruguay
*Venezuela
Yugoslavia
Zaire
Zambia
Zimbabwe

TOTAL: 108

---

* Acceded to the GATT after the Uruguay Round began.

** Countries in the process of acceding, but not yet contracting parties to the GATT.

NOTE: Bulgaria and Nepal applied for accession to the GATT, but are not participating in the Uruguay Round.

Table 3

MARKET ACCESS PROPOSALS SUBMITTED

- Argentina
- Australia
- Austria
- Bangladesh
- Barbados
- Brazil
- Canada
- Chile
- China
- Colombia
- Cote d'Ivoire
- Cuba
- Czechoslovakia
- Egypt
- European Community
- Finland
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Jamaica
- Japan
- Korea
- Malaysia
- Mexico
- Moracco
- New Zealand
- Nicaragua
- Nigeria
- Norway
- Pakistan
- Paraguay
- Peru
- Philippines
- Poland
- Romania
- Senegal
- Singapore
- South Africa
- Sri Lanka
- Sweden
- Switzerland
- Thailand
- Trinidad and Tobago
- Turkey
- United States
- Uruguay
- Yugoslavia
- Zimbabwe

Table 4

OVERVIEW OF MARKET ACCESS OFFERS [1]

COUNTRY	Pct. Change in Trade Weighted Tariff: USTR[2]	GATT	Average Tariff: Pre-UR	Post-UR	Percent Bindings: Pre-UR	Post-UR
Argentina	4	-74	20.1	19.2	2	100
Australia	44	44	20.4	11.4	37	100
Austria	28	28	10.2	7.3	92	96
Bangladesh	NDA[3]					
Barbados	NDA					
Brazil	3	3	34.4	37.3	23	27
Canada	38	38	8.6	5.3	99	100
Chile	NDA					
China	0	0	20.9	20.9	0	1
Colombia	0	-16	23.0	23.0	4	22
Cote d'Ivoire	NDA					
Cuba	23	23	11.9	9.1	18	57
Czechoslovakia	32	32	5.0	3.4	95	100
EC	25	30	5.6	3.9	100	100
Egypt	NA	-5	17.1	18.0	24	29
Finland	28	31	5.5	3.8	99	100
Hong Kong	0	0	0.0	0.0	1	23
Hungary	33	33	10.4	7.0	88	97
Iceland	21	24	18.2	13.8	55	62
India	20	23	49.3	38.0	6	62
Indonesia	0	0	20.3	20.3	32	33-40
Jamaica	NDA					
Japan	31	56	3.6	1.6	89	91
Korea	31	33	17.5	11.7	23	83
Malaysia	8	-5	9.5	9.2	1	12
Mexico	19	19	45.3	36.9	100	100
Morocco	NDA					
New Zealand	37	37	20.4	12.9	63	99
Nicaragua	NDA					
Nigeria	NDA					
Norway	32	33	3.3	2.2	99	100
Pakistan	NDA					
Paraguay	NDA					
Peru	1	-14	32.2	31.9	24	83
Philippines	0	-44	22.8	22.8	13	36
Poland	45	45	15.0	8.3	0	64
Romania	NDA					
Senegal	0	-1	13.4	13.4	46	47
Singapore	0	0	0.4	0.4	0	37
South Africa	NA	21	24.8	19.2	32	58
Sri Lanka	NDA					
Sweden	27	28	4.6	3.3	97	100
Switzerland	23	27	2.2	1.6	100	100
Thailand	6	6	36.3	34.0	12	34
Trinidad and Tobago	NDA					
Turkey	1	1	25.0	22.5	38	39
United States	37	37	5.4	3.4	99	100
Uruguay	-1	-1	20.9	21.2	10	13
Yugoslavia	3	3	13.0	12.6	30	30-80
Zimbabwe	0	-10	4.1	4.1	12	15

---

1 Statistical analysis from GATT Secretariat Review & Assessment documents.
2 Adjusted by USTR for proposals which exclude agriculture or contain significant ceiling bindings.
3 NDA = No Data Available; NA = Not Available

Table 5

URUGUAY ROUND NEGOTIATIONS ON SERVICES

Initial Market Access Offers Submitted to Date

Argentina

Australia

Austria

Canada

Colombia

European Community

Finland

Hong Kong

Indonesia

Japan

Korea

Mexico

New Zealand

Norway

Singapore

Sweden

Switzerland

United States

Attachment A

GENERAL AGREEMENT ON TARIFFS AND TRADE

MIN.DEC
20 September 1986

Multilateral Trade Negotiations
The Uruguay Round

MINISTERIAL DECLARATION ON THE URUGUAY ROUND

Ministers, meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este, have decided to launch Multilateral Trade Negotiations (The Uruguay Round). To this end, they have adopted the following Declaration. The Multilateral Trade Negotiations will be open to the participation of countries as indicated in Parts I and II of this Declaration. A Trade Negotiations Committee is established to carry out the negotiations. The Trade Negotiations Committee shall hold its first meeting not later than 31 October 1986. It shall meet as appropriate at Ministerial level. The Multilateral Trade Negotiations will be concluded within four years.

PART I

NEGOTIATIONS ON TRADE IN GOODS

The CONTRACTING PARTIES meeting at Ministerial level

DETERMINED to halt and reverse protectionism and to remove distortions to trade

DETERMINED also to preserve the basic principles and to further the objectives of the GATT

DETERMINED also to develop a more open, viable and durable multilateral trading system

CONVINCED that such action would promote growth and development

MINDFUL of the negative effects of prolonged financial and monetary instability in the world economy, the indebtedness of a large number of less developed contracting parties, and considering the linkage between trade, money, finance and development

DECIDE to enter into Multilateral Trade Negotiations on trade in goods within the framework and under the aegis of the General Agreement on Tariffs and Trade.

A. OBJECTIVES

Negotiations shall aim to:

(i) bring about further liberalization and expansion of world trade to the benefit of all countries, especially less-developed contracting parties, including the improvement of access to markets by the reduction and elimination of tariffs, quantitative restrictions and other non-tariff measures and obstacles;

(ii) strengthen the rôle of GATT, improve the multilateral trading system based on the principles and rules of the GATT and bring about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines;

(iii) increase the responsiveness of the GATT system to the evolving international economic environment, through facilitating necessary structural adjustment, enhancing the relationship of the GATT with the relevant international organizations and taking account of changes in trade patterns and prospects, including the growing importance of trade in high technology products, serious difficulties in commodity markets and the importance of an improved trading environment providing, inter alia, for the ability of indebted countries to meet their financial obligations;

(iv) foster concurrent cooperative action at the national and international levels to strengthen the inter-relationship between trade policies and other economic policies affecting growth and development, and to contribute towards continued, effective and determined efforts to improve the functioning of the international monetary system and the flow of financial and real investment resources to developing countries.

B. GENERAL PRINCIPLES GOVERNING NEGOTIATIONS

(i) Negotiations shall be conducted in a transparent manner, and consistent with the objectives and commitments agreed in this Declaration and with the principles of the General Agreement in order to ensure mutual advantage and increased benefits to all participants.

(ii) The launching, the conduct and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis by agreement prior to the formal conclusion of the negotiations. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

(iii) Balanced concessions should be sought within broad trading areas and subjects to be negotiated in order to avoid unwarranted cross-sectoral demands.

(iv) The CONTRACTING PARTIES agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the General Agreement and in the Decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries applies to the negotiations. In the implementation of standstill and rollback, particular care should be given to avoiding disruptive effects on the trade of less-developed contracting parties.

(v) The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e. the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.

(vi) Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

(vii) Special attention shall be given to the particular situation and problems of the least-developed countries and to the need to encourage positive measures to facilitate expansion of their trading opportunities. Expeditious implementation of the relevant provisions of the 1982 Ministerial Declaration concerning the least-developed countries shall also be given appropriate attention.

C. STANDSTILL AND ROLLBACK

Commencing immediately and continuing until the formal completion of the negotiations, each participant agrees to apply the following commitments:

Standstill

(i) not to take any trade restrictive or distorting measure inconsistent with the provisions of the General Agreement or the Instruments negotiated within the framework of GATT or under its auspices;

(ii) not to take any trade restrictive or distorting measure in the legitimate exercise of its GATT rights, that would go beyond that which is necessary to remedy specific situations, as provided for in the General Agreement and the Instruments referred to in (i) above;

(iii) not to take any trade measures in such a manner as to improve its negotiating positions;

Rollback

(i) that all trade restrictive or distorting measures inconsistent with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices, shall be phased out or brought into conformity within an agreed timeframe not later than by the date of the formal completion of the negotiations, taking into account multilateral agreements, undertakings and understandings, including strengthened rules and disciplines, reached in pursuance of the Objectives of the Negotiations;

(ii) there shall be progressive implementation of this commitment on an equitable basis in consultations among participants concerned, including all affected participants. This commitment shall take account of the concerns expressed by any participant about measures directly affecting its trade interests;

(iii) there shall be no GATT concessions requested for the elimination of these measures.

Surveillance of standstill and rollback

Each participant agrees that the implementation of these commitments on standstill and rollback shall be subject to multilateral surveillance so as to ensure that these commitments are being met. The Trade Negotiations Committee will decide on the appropriate mechanisms to carry out the surveillance, including periodic reviews and evaluations. Any participant may bring to the attention of the appropriate surveillance mechanism any actions or omissions it believes to be relevant to the fulfilment of these commitments. These notifications should be addressed to the GATT secretariat which may also provide further relevant information.

D. SUBJECTS FOR NEGOTIATION

Tariffs

Negotiations shall aim, by appropriate methods, to reduce or, as appropriate, eliminate tariffs including the reduction or elimination of high tariffs and tariff escalation. Emphasis shall be given to the expansion of the scope of tariff concessions among all participants.

Non-tariff measures

Negotiations shall aim to reduce or eliminate non-tariff measures, including quantitative restrictions, without prejudice to any action to be taken in fulfilment of the rollback commitments.

Tropical products

Negotiations shall aim at the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms and shall cover both tariff and all non-tariff measures affecting trade in these products.

The CONTRACTING PARTIES recognize the importance of trade in tropical products to a large number of less developed contracting parties and agree that negotiations in this area shall receive special attention, including the timing of the negotiations and the implementation of the results as provided for in B(ii).

Natural resource-based products

Negotiations shall aim to achieve the fullest liberalization of trade in natural resource-based products, including in their processed and semi-processed forms. The negotiations shall aim to reduce or eliminate tariff and non-tariff measures, including tariff escalation.

Textiles and clothing

Negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade.

Agriculture

The CONTRACTING PARTIES agree that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by:

(i) improving market access through, inter alia, the reduction of import barriers;

(ii) improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;

(iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements.

In order to achieve the above objectives, the negotiating group having primary responsibility for all aspects of agriculture will use the Recommendations adopted by the CONTRACTING PARTIES at their Fortieth Session, which were developed in accordance with the GATT 1982 Ministerial Work Programme, and take account of the approaches suggested in the work of the Committee on Trade in Agriculture without prejudice to other alternatives that might achieve the objectives of the negotiations.

GATT Articles

Participants shall review existing GATT Articles, provisions and disciplines as requested by interested contracting parties, and, as appropriate, undertake negotiations.

Safeguards

(i) A comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations.

(ii) The agreement on safeguards:

- shall be based on the basic principles of the General Agreement;
- shall contain, inter alia, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury or threat thereof, temporary nature, degressivity and structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance and dispute settlement; and
- shall clarify and reinforce the disciplines of the General Agreement and should apply to all contracting parties.

MTN Agreements and Arrangements

Negotiations shall aim to improve, clarify, or expand, as appropriate, Agreements and Arrangements negotiated in the Tokyo Round of Multilateral Negotiations.

Subsidies and countervailing measures

Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MTN Agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. A negotiating group will be established to deal with these issues.

Dispute settlement

In order to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and the procedures of the dispute settlement process, while recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations.

Trade-related aspects of intellectual property rights, including trade in counterfeit goods

In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters.

Trade-related investment measures

Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade.

E. FUNCTIONING OF THE GATT SYSTEM

Negotiations shall aim to develop understandings and arrangements:

(i) to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices of contracting parties and their impact on the functioning of the multilateral trading system;

(ii) to improve the overall effectiveness and decision-making of the GATT as an institution, including, *inter alia*, through involvement of Ministers;

(iii) to increase the contribution of the GATT to achieving greater coherence in global economic policy-making through strengthening its relationship with other international organizations responsible for monetary and financial matters.

F. PARTICIPATION

(a) Negotiations will be open to:

  (i) all contracting parties,

  (ii) countries having acceded provisionally,

  (iii) countries applying the GATT on a *de facto* basis having announced, not later than 30 April 1987, their intention to accede to the GATT and to participate in the negotiations,

(iv) countries that have already informed the CONTRACTING PARTIES, at a regular meeting of the Council of Representatives, of their intention to negotiate the terms of their membership as a contracting party, and

(v) developing countries that have, by 30 April 1987, initiated procedures for accession to the GATT, with the intention of negotiating the terms of their accession during the course of the negotiations.

(b) Participation in negotiations relating to the amendment or application of GATT provisions or the negotiation of new provisions will, however, be open only to contracting parties.

G. ORGANIZATION OF THE NEGOTIATIONS

A Group of Negotiations on Goods (GNG) is established to carry out the programme of negotiations contained in this Part of the Declaration. The GNG shall, inter alia:

(i) elaborate and put into effect detailed trade negotiating plans prior to 19 December 1986;

(ii) designate the appropriate mechanism for surveillance of commitments to standstill and rollback;

(iii) establish negotiating groups as required. Because of the interrelationship of some issues and taking fully into account the general principles governing the negotiations as stated in B(iii) above it is recognized that aspects of one issue may be discussed in more than one negotiating group. Therefore each negotiating group should as required take into account relevant aspects emerging in other groups;

(iv) also decide upon inclusion of additional subject matters in the negotiations;

(v) co-ordinate the work of the negotiating groups and supervise the progress of the negotiations. As a guideline not more than two negotiating groups should meet at the same time;

(vi) the GNG shall report to the Trade Negotiations Committee.

In order to ensure effective application of differential and more favourable treatment the GNG shall, before the formal completion of the negotiations, conduct an evaluation of the results attained therein in terms of the Objectives and the General Principles Governing Negotiations as set out in the Declaration, taking into account all issues of interest to less-developed contracting parties.

PART II
NEGOTIATIONS ON TRADE IN SERVICES

Ministers also decide, as part of the Multilateral Trade Negotiations, to launch negotiations on trade in services.

Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations.

GATT procedures and practices shall apply to these negotiations. A Group of Negotiations on Services is established to deal with these matters. Participation in the negotiations under this Part of the Declaration will be open to the same countries as under Part I. GATT secretariat support will be provided, with technical support from other organizations as decided by the Group of Negotiations on Services.

The Group of Negotiations on Services shall report to the Trade Negotiations Committee.

IMPLEMENTATION OF RESULTS UNDER PARTS I AND II

When the results of the Multilateral Trade Negotiations in all areas have been established, Ministers meeting also on the occasion of a Special Session of CONTRACTING PARTIES shall decide regarding the international implementation of the respective results.

Attachment B

INFORMATION
GENERAL AGREEMENT ON TARIFFS AND TRADE
ACCORD GÉNÉRAL SUR LES TARIFS DOUANIERS ET LE COMMERCE

CENTRE WILLIAM-RAPPARD, 154, RUE DE LAUSANNE, 1211 GENEVE 21, TEL. 022 310231

GATT/1405
5 February 1987

THE URUGUAY ROUND - DECISIONS OF 28 JANUARY 1987

The negotiating structure and the negotiating plans for all the issues affecting trade in goods outlined by Ministers at the Punta del Este meeting in September were agreed on 28 January in Geneva. The programme for the initial phase of the negotiations on trade in services agreed on at Punta del Este was likewise adopted. Also agreed, was the nature of the surveillance mechanism which will oversee the 'standstill' and 'rollback' commitments contained in the Punta del Este Declaration.

With these decisions, the mechanisms and procedures to carry forward the negotiations have been put in place.

The Group of Negotiations on Goods (GNG), the Group of Negotiations on Services (GNS) and the Trade Negotiations Committee (TNC), which oversees the conduct of the Uruguay Round, met on 28 January 1987. The TNC took the decision on the mechanism for the surveillance of standstill and rollback and took note of decisions reached by the GNG and GNS. The decisions were as follows:

1. Mechanism for the Surveillance of Standstill and Rollback

- A decision by the TNC, based upon a recommendation from the GNG, on the establishment of a mechanism for the surveillance of the standstill and rollback commitments in the Ministerial Declaration on the Uruguay Round. (Annex 1, page 4)

- Related statements by the Chairman of the TNC. (Annex 1a, page 6)

2. (GNG) Negotiating Structure

- A decision by the GNG on negotiating structure which includes the initial timetable of meetings of each of the individual negotiating groups. (Annex 2, page 7)

- A related statement by the Chairman of the GNG. (Annex 2a, page 8)

3. (GNG) Negotiating Plans

- The negotiating plans of 14 individual groups covering each of the subjects outlined for negotiation in Part One of the Ministerial Declaration. (Annex 3, page 9)

- A related statement by the Chairman of the GNG. (Annex 3a, page 24)

4. Group of Negotiations on Services

- A decision by the GNS on the programme for the initial phase of negotiations on trade in services. (Annex 4, page 25)

Note to Editors

The Trade Negotiations Committee was chaired by Mr. Arthur Dunkel (Director-General of GATT) who is also chairman of the Group of Negotiations on Goods. The Chairman of the Group of Negotiations on Services was Ambassador Felipe Jaramillo of Colombia.

ANNEX 1

SURVEILLANCE OF STANDSTILL AND ROLLBACK

Standstill

1. Any participant may bring to the attention of a Surveillance Body, open to all participants, through the GATT secretariat, any action or measure, taken by itself or another participant, which it believes relevant to the fulfilment of the standstill commitments. Any such notification will be deemed to have been submitted to the Surveillance Body upon its receipt by the secretariat.

2. The secretariat shall circulate promptly to all participants, and in no case later than 10 working days after receipt, a copy of all notifications addressed to the Surveillance Body. When notifications relate to actions by other participants (reverse notifications) the secretariat shall promptly inform the country to which they relate. Any comments[1] and any other relevant factual material received within the above period of 10 working days will be circulated together with the notification. If any comments or further information become available subsequently they will be circulated promptly.

3. The Surveillance Body will examine the relationship between the actions or measures notified and paragraphs (i), (ii) and (iii) of the standstill commitment contained in Section C of Part I of the Ministerial Declaration at its first meeting following the 10 working day period referred to in paragraph 2 above. The Surveillance Body will transmit a record of its proceedings to the next meeting of the TNC. (This record will be transmitted to the GNG for its information.)

Rollback

4. Any participant may bring to the attention of other participants, through the GATT secretariat, measures which it is applying or measures applied by another participant, which it believes should be subject to the rollback commitment. It will be open to any participant to notify to the Surveillance Body any omission by another participant which it believes to be relevant to the fulfilment of the rollback commitment.

5. Participants concerned shall consult in order to arrive at rollback undertakings. Timely notice of such consultations shall be sent to the secretariat for the information of all participants so that any affected participants may also take part in consultations if they so wish. Participants shall notify any undertakings resulting from these consultations to the Surveillance Body.

---

[1] The absence of comments by a country subject to a reverse notification shall not be deemed to constitute an admission that the measure is subject to the standstill commitment.

6. The Surveillance Body shall monitor the implementation of the undertakings resulting from the consultations referred to in paragraph 5 above and report to the TNC. (This report will be transmitted to the GNG for its information.)

---

7. In order to carry out the functions set out above the Surveillance Body will meet at least three times a year. It may also meet at the request of any participant, in accordance with the usual GATT practices.

8. The TNC will meet at least every six months to carry out, on the basis of the records and reports transmitted to it by the Surveillance Body, a periodic evaluation of the implementation of the standstill and rollback commitments, and of its impact on the process of multilateral trade negotiations and in relation to the interests of individual participants.

MORE

ANNEX 1a

Statements by the Chairman of the TNC related to surveillance of standstill and rollback

(i) With reference to paragraph 5:

"It is my understanding that participants maintaining measures that may be subject to the rollback commitment shall inform the Surveillance Body by 31 December 1987 of rollback undertakings resulting from the first round of consultations under paragraph 5."

(ii) With reference to paragraph 7:

"It is the understanding of the Chairman that the relevant GATT practice is the one followed by the GATT Council. The Council meets at periodic intervals, but if a contracting party considers that a matter cannot wait for the next regular meeting of the Council and requires urgent consideration, it may request a meeting for this purpose. When such requests have been made, they have normally been met, once the Chairman has consulted with interested parties."

(iii) Date of first meeting:

"It is the understanding of the Chairman that the first meeting of the Surveillance Body will take place in the week beginning 23 February 1987."

MORE

ANNEX 2

NEGOTIATING STRUCTURE

In carrying out the programme of negotiations contained in Part I of the Punta del Este Declaration, the GNG shall discharge its functions in strict accordance with the provisions of Section G thereof, and will meet as frequently as necessary.

The Negotiating Groups set up for the purpose of carrying out the work envisaged in the annexed Negotiating Plans will hold their initial meetings as set out below. Where the Negotiating Plans provide for an initial phase, this should in each case be completed by the end of 1987 at latest.

Group		
1	Tariffs	Week beginning 9 February
2	Non-Tariff Measures	
3	Natural Resource-Based Products	
4	Textiles and Clothing	
5	Agriculture	Week beginning 16 February
6	Tropical Products	Week beginning 23 February
7	GATT Articles	Week beginning 2 March
8	MTN Agreements and Arrangements	
9	Safeguards	Week beginning 9 March
10	Subsidies and Countervailing Measures	Week beginning 16 March
11	Trade-Related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods	Week beginning 23 March
12	Trade-Related Investment Measures	Week beginning 30 March
13	Dispute Settlement	Week beginning 6 April
14	Functioning of the GATT System	

It is agreed that a meeting of the Group of Negotiations on Goods will take place on 13 April 1987.

MORE

ANNEX 2a

Statement by the Chairman of the GNG related to the decision on the negotiating structure

"It is my understanding that the Decision on the Negotiating Structure has been adopted on the basis of the following understanding:

1. Meetings of the Negotiating Groups will be arranged in the year 1987 on the calendar pattern set out in the Decision on the Negotiating Structure.

2. Each of the 14 Negotiating Groups will have its own chairman and will operate as a separate entity.

3. It will be open to two or more Negotiating Groups to hold joint meetings if they so decide.

4. A given person may be appointed to the chairmanship of more than one Negotiating Group.

5. It is envisaged that, subject to agreement on the persons in question, the same individual may be appointed for the initial phase to the chairmanships of Negotiating Groups 1, 2, 3 and 4. The same approach would be considered for Groups 7 and 8 and for Groups 13 and 14.

6. A meeting of Heads of Delegation to the GNG, to be held before 9 February, will approve a list of persons to be appointed as chairmen of the Groups."

MORE

ANNEX 3

TARIFFS

Negotiating Plan

Negotiating Objective

"Negotiations shall aim, by appropriate methods, to reduce or, as appropriate, eliminate tariffs including the reduction or elimination of high tariffs and tariff escalation. Emphasis shall be given to the expansion of the scope of tariff concessions among all participants."

Principal Stages of the Negotiating Process

Initial Phase

- Submission of proposals by participants on:
  - a tariff-cutting approach/approaches, including elimination of tariffs;
  - the elimination or reduction of high tariffs and tariff escalation in appropriate product areas;
  - possible criteria to expand the scope of tariff concessions including the degree of tariff bindings.
- Broadening and updating of factual basis (Tariff Study files, Harmonized System data bank).
- Factual notes by secretariat and/or participants, as required, on issues to be negotiated.

Subsequent Negotiating Process

- Agreement on a common negotiating basis comprising the issues listed under the Initial Phase above.
- Bilateral phase of the negotiations between participants on individual tariff items.
- Elaboration of a tariff protocol.

MORE

NON-TARIFF MEASURES

Negotiating Plan

Negotiating Objective

"Negotiations shall aim to reduce or eliminate non-tariff measures, including quantitative restrictions, without prejudice to any action to be taken in fulfilment of the rollback commitments."

Principal Stages of the Negotiating Process

Initial Phase

- A first examination of the issues to be covered, including the relationship between the negotiations in this area and other areas of the negotiations. Establishment of an adequate data base for negotiation. Participants would also present proposals setting out the particular problems that they want to address and the techniques which they consider should be used to deal with them (bilateral, plurilateral or multilateral). Paper by the secretariat on the data base and relevant work already undertaken in the GATT on techniques for negotiating on quantitative restrictions and other non-tariff measures.

- The proposals by participants would be examined with a view to reaching a common understanding on appropriate techniques and procedures (bilateral requests and offers, subject to procedures to ensure transparency; multilateral approaches) and on subjects to be dealt with multilaterally.

Subsequent Negotiating Process

- Tabling of detailed requests for bilateral or plurilateral negotiations on specific measures and of specific texts relating to any issues to be dealt with multilaterally.

- Negotiations will proceed on the common basis.

MORE

TROPICAL PRODUCTS

Negotiating Plan

Negotiating Objective

"Negotiations shall aim at the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms and shall cover both tariff and all non-tariff measures affecting trade in these products.

The CONTRACTING PARTIES recognise the importance of trade in tropical products to a large number of less developed contracting parties and agree that negotiations in this area shall receive special attention, including the timing of the negotiations and the implementation of the results as provided for in B(ii)" of the Ministerial Declaration.

Principal Stages of the Negotiating Process

Initial Phase

This phase would cover the following work:

(a) exchange of views on work done so far in GATT in this area;
(b) compilation of background material for negotiations;
(c) submission of initial proposals and other inputs by participants aimed at achieving the agreed objectives of negotiations in this area;
(d) agreement on techniques and modalities as a common basis for negotiations, including the tabling of initial requests/offers.

Subsequent Negotiating Process

Negotiations will proceed as early as possible in 1988 on the basis of the work in the previous phase with the aim of achieving concrete results and their implementation at the earliest possible date in the light of the provisions of Section B (ii) of the Ministerial Declaration.

Monitoring of Progress

Throughout the negotiations on tropical products special attention at the appropriate level will be given to the task of reviewing the progress achieved.

MORE

NATURAL RESOURCE-BASED PRODUCTS

Negotiating Plan

Negotiating Objective

"Negotiations shall aim to achieve the fullest liberalization of trade in natural resource-based products including in their processed and semi-processed forms. The negotiations shall aim to reduce or eliminate tariff and non-tariff measures, including tariff escalation."

Principal Stages of the Negotiating Process

Initial Phase

- Determination of issues relevant to the Negotiating Objective taking into account documentation established by the Working Party on Natural Resource-Based Products and proposals by participants.

- Establishment of a factual basis for negotiations.

- Elaboration of techniques and modalities for achieving the agreed objectives of negotiations in this area, taking into account those elaborated in other relevant areas.

- Establishment of a common negotiating basis.

Subsequent Negotiating Process

- Tabling of requests and offers.

- Negotiations will proceed on the common basis.

MORE

TEXTILES AND CLOTHING

Negotiating Plan

Negotiating Objective

"Negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade."

Principal Stages of the Negotiating Process

Initial Phase

This phase will be devoted to preparatory work in this area. The annual reports of the TSB, information provided by the Sub-Committee on Adjustment and other sources, as well as material from the Working Party on Textiles and Clothing including the related documentation as updated, can make a useful contribution to this stage of work.

Subsequent Negotiating Process

- Examination of techniques and modalities for achievement of the objectives set out in this area in the light of proposals made by participants.

- Negotiations aimed at achieving the Negotiating Objective in this area.

MORE

AGRICULTURE

Negotiating Plan

Negotiating Objective

"CONTRACTING PARTIES agree that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by:

(i) improving market access through, inter alia, the reduction of import barriers;

(ii) improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;

(iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements.

In order to achieve the above objectives, the negotiating group having primary responsibility for all aspects of agriculture will use the Recommendations adopted by the CONTRACTING PARTIES at their Fortieth Session, which were developed in accordance with the GATT 1982 Ministerial Programme, and take account of the approaches suggested in the work of the Committee on Trade in Agriculture without prejudice to other alternatives that might achieve the objectives of the negotiations."

MORE

Principal Stages of the Negotiating Process

Initial Phase

- Identification of major problems and their causes, including all measures affecting directly or indirectly agricultural trade, taking into account inter alia work done by the CTA, and elaboration of an indicative list of issues considered relevant by participants to achieving the Negotiating Objective.

- The concurrent submission of supplementary information on measures and policies affecting trade in the AG/FOR-series, including full notification of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade.

- Consideration of basic principles to govern world trade in agriculture.

- Submission and initial examination of proposals by participants aimed at achieving the Negotiating Objective.

Subsequent Negotiating Process

- Within this process, further examination as appropriate of proposals and initiation of negotiations.

- Negotiations with a view to reaching agreement on (a) comprehensive texts of strengthened and more operationally effective GATT rules and disciplines; (b) the nature and the content of specific multilateral commitments to be undertaken including as appropriate implementation programmes and transitional arrangements; (c) any other understandings which should also be deemed necessary for the fulfilment of the Negotiating Objective; and (d) exchange of concessions, as appropriate.

MORE

GATT ARTICLES

Negotiating Plan

Negotiating Objective

"Participants shall review existing GATT Articles, provisions and disciplines as requested by interested contracting parties, and, as appropriate, undertake negotiations."

Principal Stages of the Negotiating Process

Initial Phase

- Requests by interested contracting parties for review of GATT Articles, provisions and disciplines, indicating why they consider that these should be the subject of negotiations. Factual background papers by the secretariat on these Articles, provisions and disciplines. Review, following requests by participants, of GATT Articles, provisions and disciplines, with a view to determining issues on which negotiations are appropriate.

Subsequent Negotiating Process

- Tabling of specific texts by contracting parties on issues so identified for negotiation. Review and analysis of these proposals.

- Negotiations on the basis established.

MORE

SAFEGUARDS

Negotiating Plan

Negotiating Objective

"(i) A comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations.

(ii) The agreement on safeguards:

- shall be based on the basic principles of the General Agreement;
- shall contain, inter alia, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury or threat thereof, temporary nature, degressivity and structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance and dispute settlement; and
- shall clarify and reinforce the disciplines of the General Agreement and should apply to all contracting parties."

Negotiating Process

- Examination of the issues in this area would be carried out with the assistance of papers by participants setting out their specific suggestions for achieving the Negotiating Objective in this area, and of a paper by the secretariat on relevant work already undertaken in the GATT, including in particular on the elements enumerated in the Ministerial Declaration, and any other factual background material as required.
- Proposals by participants would be examined with a view to drawing up a draft text of a comprehensive agreement as a basis for negotiation.
- Negotiations will proceed on the basis of the draft text with a view to drawing up and concluding a comprehensive agreement as expeditiously as possible, taking into account that such an agreement is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations.

MORE

MTN AGREEMENTS AND ARRANGEMENTS

Negotiating Plan

Negotiating Objective

"Negotiations shall aim to improve, clarify, or expand, as appropriate, Agreements and Arrangements negotiated in the Tokyo Round of Multilateral Negotiations."

Principal Stages of the Negotiating Process

Initial Phase

- Suggestions by participants indicating the issues that they wish to raise with respect to individual MTN Agreements and Arrangements. Factual background paper by the Secretariat on these issues. Examination of the proposals made by participants, with a view to clarifying issues on which negotiations are appropriate, having regard to work in the relevant Committees and Councils established under the MTN Agreements and Arrangements. In the light of the issues identified, agreement on the negotiating techniques and modalities for the subsequent stages.

Subsequent Negotiating Process

- Submission of specific texts by interested participants on issues identified for negotiation. Review and analysis of the proposals.

- Negotiations on the basis established.

MORE

SUBSIDIES AND COUNTERVAILING MEASURES

Negotiating Plan

Negotiating Objective

"Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MTN Agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. A negotiating group will be established to deal with these issues."

Principal Stages of the Negotiating Process

Initial Phase

- Submission of proposals by participants, together with any background notes, on issues to be taken up in the negotiations, and on negotiating techniques. Factual background notes by the secretariat. Examination of the proposals and the documentation.

Subsequent Negotiating Process

- Development of a common negotiating basis for improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. Tabling of specific drafting proposals by participants.

- Negotiations on the basis of specific drafting proposals.

MORE

DISPUTE SETTLEMENT

Negotiating Plan

Negotiating Objective

"In order to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and the procedures of the dispute settlement process, while recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations."

Principal Stages of the Negotiating Process

Initial Phase

- Submission by participants of their analyses of the functioning of the GATT dispute settlement process and of their views on matters to be taken up in the negotiations. Factual background papers by the Secretariat as required. Review of the dispute settlement process with a view to identifying issues on which negotiations are appropriate.

- Tabling of specific proposals by participants on issues identified for negotiation.

Subsequent Negotiating Process

- Review and analysis of proposals.

- Negotiations on the basis established.

MORE

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

Negotiating Plan

Negotiating Objective

"In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters."

Principal Stages of the Negotiating Process

Initial Phase

- Trade-related aspects of intellectual property rights: Identification of relevant GATT provisions and examination of their operation on the basis of suggestions by participants for achieving the Negotiating Objective and of factual information by the secretariat as required. Initial examination of the specific suggestions and of the procedures and techniques that might be used to implement them.

- Trade in counterfeit goods: Examination of the matters to be dealt with in this area on the basis of the report of the Group of Experts (L/5878), of other work already undertaken in the GATT and of papers by participants setting out their suggestions for achieving the negotiating objectives. Other factual information as required.

- Consideration of the relationship between the negotiations in this area and initiatives in other fora. Collection of information from relevant sources.

Subsequent Negotiating Process

- If necessary, further examination of the specific suggestions and of the procedures and techniques that might be used to implement them.

- Tabling of specific texts by interested participants, as appropriate. Examination of these texts with a view to establishment of a common negotiating basis.

- Negotiations on the basis established.

TRADE-RELATED INVESTMENT MEASURES

Negotiating Plan

Negotiating Objective

"Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade."

Principal Stages of the Negotiating Process

Initial Phase

- Identification and examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, on the basis of submissions by participants and with the assistance, as appropriate, of background documentation by the secretariat.

Subsequent Negotiating Process

- Definition of areas in which negotiations may be required to elaborate, as appropriate, further provisions that may be necessary to avoid restrictive and distorting effects of investment measures on trade, on the basis of proposals by participants.

- Negotiations on the basis established.

MORE

FUNCTIONING OF THE GATT SYSTEM

Negotiating Plan

Negotiating Objectives

"Negotiations shall aim to develop understandings and arrangements:

(i) to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices of contracting parties and their impact on the functioning of the multilateral trading system;

(ii) to improve the overall effectiveness and decision-making of the GATT as an institution, including, *inter alia*, through involvement of Ministers;

(iii) to increase the contribution of the GATT to achieving greater coherence in global economic policy-making through strengthening its relationship with other international organizations responsible for monetary and financial matters."

Principal stages of the Negotiating Process

Initial Phase

- a first examination of issues on the basis of proposals by participants;
- any background documentation required from the secretariat;

Subsequent Negotiating Process

- Establishment of common working texts on which to base any understandings and arrangements which are to be negotiated.
- In this stage final texts will be agreed upon as appropriate, containing understandings or specifying arrangements relating to those aspects of the functioning of the GATT system referred to in section E of the Ministerial Declaration.

MORE

ANNEX 3a

Statement by the Chairman of the GNC related to the negotiating plans

"Wherever the words "Negotiating Objective" appear under the "Principal Stages of the Negotiating Process" of the Negotiating Plans, they refer to the entire text which appears under the heading "Negotiating Objective" at the beginning of each plan."

MORE

ANNEX 4

GROUP OF NEGOTIATIONS ON SERVICES

Programme for the initial phase of negotiations

Report by the Chairman

Discussions in the Group have focussed on the initial phase of negotiations and on identifying a number of elements which should be addressed in 1987 in conformity with the negotiating objectives. These elements are listed below. It is understood that this list is non-exhaustive, and that no particular significance attaches to the way in which the items are formulated; there will be opportunity to give greater precision to their content in due course. It is also understood that neither the formulation of the items nor the order in which they are listed prejudge the relative importance of any of them, or imply any ordering for negotiating purposes.

Negotiating objectives

"Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations."

Elements

- Definitional and statistical issues
- Broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based
- Coverage of the multilateral framework for trade in services
- Existing international disciplines and arrangements
- Measures and practices contributing to or limiting the expansion of trade in services, including specifically any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalization might be applicable

It is understood that at the first meeting, a general debate structured around the above elements will take place. A periodic overview of progress would take place. Such general debate and overview should, inter alia, facilitate determination of the technical support to be provided by relevant international organizations. There will be a stock-taking at the end of 1987 in order to determine how to carry forward the negotiating programme.

MORE

Schedule of meetings for 1987

There will be a total of twelve days of meetings in the first half of 1987.

Meeting dates	Agenda
23 - 25 February	General debate, elements
Following meetings	elements

Attachment C

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED
MTN.TNC/11
21 April 1989
Special Distribution

Trade Negotiations Committee

MID-TERM MEETING

This document sets out the entire package of results adopted by the Trade Negotiations Committee at its mid-term review held in Montreal on 5-9 December 1988 and in Geneva on 5-8 April 1989.

A record of the Montreal meeting has been circulated as MTN.TNC/8(MIN). A record of the meeting held in Geneva on 5-8 April 1989 will be issued as MTN.TNC/10.

GATT SECRETARIAT

PART I

NEGOTIATIONS ON TRADE IN GOODS

SURVEILLANCE OF STANDSTILL AND ROLLBACK

Ministers, noting the political importance of the standstill and rollback undertaking:

(a) affirm their determination to ensure that the standstill and rollback commitments are met;

(b) emphasize the need to take appropriate action to ensure withdrawal of all measures contrary to the standstill commitment, taking into account that there are a number of measures which have been ruled GATT-inconsistent by panel reports adopted by the CONTRACTING PARTIES;

(c) recognize the importance of regular discussions in the Surveillance Body of trade measures, including those not yet in force, which may have an effect on the standstill commitment;

(d) emphasize the need for timely action on rollback, and prompt response to rollback requests, so as to ensure progressive implementation of the rollback commitment on an equitable basis;

(e) urge participants, without prejudice to the existing procedures, to indicate to the Surveillance Body how and when they intend to proceed to rollback measures covered by the commitment, taking into account the fact that there are a number of measures which have been ruled GATT-inconsistent by panel reports adopted by the CONTRACTING PARTIES;

(f) invite participants to examine carefully measures which they maintain, whether or not these have been notified, in order to determine what actions they should take to progressively implement their rollback commitments. Such actions could be self-initiated, could result from requests and consultations, and should be taken on a GATT-consistent basis;

(g) agree that participants should communicate the conclusions of their consideration to the Surveillance Body promptly; and

(h) agree that at its meeting in July 1989 the Trade Negotiations Committee should carry out a substantive evaluation of the implementation of the standstill and rollback commitments (including evaluation of avoidance of disruptive effects on the trade of less-developed contracting parties) and its impact on the process of multilateral trade negotiations and in relation to the interests of individual participants, with a view to taking such procedural or other action as may be appropriate.

SUBJECTS FOR NEGOTIATIONS

TARIFFS

1. Ministers agree that substantive negotiations will begin no later than 1 July 1989, and that tariff and trade data will be exchanged accordingly. They instruct their representatives to establish detailed procedures, approaches and methods necessary for the negotiations.

2. Reiterating the importance of reducing and eliminating tariffs and expanding the scope of tariff concessions as agreed in the Punta del Este Declaration and subject to the understanding that the participation of developing countries in the tariff negotiations would be in accordance with the general principles governing the negotiations, including Part I.B, paragraphs (iv)-(vii) of the Declaration, Ministers agree on the following

(a) A substantial reduction or, as appropriate, elimination of tariffs by all participants with a view to achieving lower and more uniform rates, including the reduction or elimination of high tariffs, tariff peaks, tariff escalation and low tariffs, with a target amount for overall reductions at least as ambitious as that achieved by the formula participants in the Tokyo Round.

(b) A substantial increase in the scope of bindings, including bindings at ceiling levels, so as to provide greater security and predictability in international trade.

(c) The need for an approach to be elaborated to give credit for bindings; it is also recognized that participants will recei appropriate recognition for liberalization measures adopted since 1 June 1986.

(d) The phasing of tariff reductions over appropriate periods to be negotiated.

3. Individual participants attach importance to assessing progress made in achieving real improvements in conditions of market access.

4. Participants have agreed that in the negotiation of tariff concessions, current nomenclatures should be employed and that the base rates for the negotiations will be the bound m.f.n. rates and, for unbound rates, the normally applicable rates in September 1986.

NON-TARIFF MEASURES

1. Ministers recognize that the reduction or elimination of non-tariff measures by all participants is a central element of a successful outcome of the Uruguay Round. Recognizing the importance of achieving substantially improved market access, Ministers agree that, in order to ensure effective trade liberalization, results from negotiations on non-tariff measures should be substantial.

2. Subject to the understanding that the participation of developing countries in the negotiations on non-tariff measures would be in accordance with the general principles governing the negotiations, including Part I.B, paragraphs (iv) - (vii) of the Declaration, Ministers agree to the following guidelines for the conduct of negotiations on non-tariff measures:

(a) Various negotiating approaches can be applied to these negotiations, including multilateral, formula and request-offer approaches. However, approaches which ensure the widest participation and broadest possible liberalization are to be preferred.

(b) These negotiations shall be without prejudice to any action to be taken in fulfilment of the rollback commitments contained in Part I.C of the Ministerial Declaration, which state, inter alia, that there shall be no GATT concessions requested for the elimination of GATT-inconsistent measures.

(c) Transparency will be ensured in the negotiations whose results are to be applied in accordance with the basic principles of the General Agreement.

(d) To ensure that concessions to reduce or eliminate non-tariff measures are not subsequently nullified or impaired, participants agree to explore the most appropriate measures to achieve this objective.

(e) There should be provisions for immediate or staged implementation of results over agreed time-frames.

(f) Individual participants will attach importance to assessing progress made in achieving real improvements in conditions of market access.

(g) If elimination of a non-tariff measure is not possible, consideration may be given to transforming it into a tariff.

(h) Participants will receive appropriate recognition for the liberalization measures which they have adopted.

3. Recognizing the importance of receiving proposals from both developed and developing countries, Ministers agree that the Negotiating Group will:

(a) with regard to the categories of measures for which multilateral rule-making approaches are proposed, examine relevant provisions in the General Agreement and in other agreements and will consider how to deal with the problems raised;

(b) examine proposals made for multilateral formula approaches with a view to reaching an understanding on the applicability and, if appropriate, scope and procedures for such negotiations;

(c) review the secretariat's sorting of indicative lists of non-tariff measures for which request-and-offer approaches are proposed with a view to reaching an understanding on the scope and procedures for such negotiations; and,

(d) by June 1989, aim to establish a framework for future negotiations, including procedures, taking into account the above principles and guidelines, so as to initiate detailed negotiations.

NATURAL RESOURCE-BASED PRODUCTS

1. Ministers agree that:

(a) participants will continue to pursue the objective of fullest liberalization of trade in natural resource-based products, including in their processed and semi-processed forms, as agreed in the negotiating objective and consistent with the overall objectives embodied in the Ministerial Declaration;

(b) participants will continue to pursue and give effect to the negotiating plan for natural resource-based products;

(c) participants will continue their examination of issues brought forward to date (MTN.GNG/NG3/W/14), without prejudice to additional products and issues participants may yet propose;

(d) techniques will be developed to deal with specific issues and problems encompassed by the agreed negotiating objective taking into account negotiating approaches developed in other Groups to determine to what extent particular measures will be needed to ensure achievement of this negotiating objective; and

(e) given the interrelationship of issues raised in natural resource-based products and other areas of negotiations in the Uruguay Round, it is necessary to ensure that the progress in negotiations on natural resource-based products is consistent with progress in other related areas.

2. The secretariat will continue to provide essential factual data on all relevant issues.

3. Ministers agree that effective negotiations should begin as soon as possible, it being recognized that the work on the three product areas already studied i.e. fisheries, forestry and non-ferrous metals and minerals is already well advanced.

4. In order to make this practicable, it has been agreed that participants would provide as much relevant trade and barrier data as possible by 30 June 1989.

TEXTILES AND CLOTHING

1. Ministers recognize that the sector of textiles and clothing is of great importance for the economies of many countries and particularly for the economic and social development of many developing countries and for the expansion of their export earnings.

2. Ministers, therefore, recognize that negotiations in this sector are one of the key elements in the Uruguay Round, and should contribute to further liberalization of trade.

3. With a view to achieving substantive results in this area of the negotiations, and bearing in mind the general principles governing the negotiations and the organization thereof as set out in Part I of the Punta del Este Declaration, Ministers agree that:

(a) substantive negotiations will begin in April 1989 in order to reach agreement within the time-frame of the Uruguay Round on modalities for the integration of this sector into GATT, in accordance with the negotiating objective;

(b) such modalities for the process of integration into GATT on the basis of strengthened GATT rules and disciplines should inter alia cover the phasing out of restrictions under the Multi-fibre Arrangement and other restrictions on textiles and clothing not consistent with GATT rules and disciplines, the time-span for such a process of integration, and the progressive character of this process which should commence following the conclusion of the negotiations in 1990;

(c) to this end participants are invited to put forward additional proposals, preferably not later than 30 June 1989;

(d) special treatment should be accorded to the least-developed countries.

4. To provide a positive climate for these negotiations, and without prejudice to the existing rights and obligations, and reaffirming their commitments embodied in Part I.C of the Punta del Este Declaration, all participants shall endeavour to improve the trade situation paving the way for the integration of the textiles and clothing sector into GATT.

AGRICULTURE

1. The Negotiating Group on Agriculture has made substantial progress in elaborating the elements of the negotiating proposals and submissions under the subsequent negotiating process. The stage has now been reached in this process where the general direction and procedures to be followed in the final phases of the negotiations need to be defined in operational terms so as to provide a framework for liberalizing trade in agriculture and bringing all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines.

2. There is a broad measure of consensus that agricultural policies should be more responsive to international market signals in order to meet the objective of liberalization of international trade and that support and protection should be progressively reduced and provided in a less trade-distorting manner.

3. The particular needs and conditions of developing countries should be fully taken into account at all stages of the negotiation in conformity with the principle of special and differential treatment to developing countries as laid down in the Punta del Este Declaration.

4. Ministers accordingly endorse a framework approach comprising the following interrelated long- and short-term elements and arrangements on sanitary and phytosanitary regulations.

A. LONG-TERM ELEMENTS AND GUIDELINES FOR REFORM

5. Ministers agree that the long-term objective of the agricultural negotiations is to establish a fair and market-oriented agricultural trading system and that a reform process should be initiated through the negotiation of commitments on support and protection and through the establishment of strengthened and more operationally effective GATT rules and disciplines.

6. The above-mentioned long-term objective is to provide for substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in correcting and preventing restrictions and distortions in world agricultural markets. This goal will be realized through negotiations on specific policies and measures, through the negotiation of commitments on an aggregate measurement of support, the terms of which will be negotiated, or through a combination of these approaches. Credit will be given for measures implemented since the Punta del Este Declaration which contribute positively to the reform programme.

7. In realizing the long-term objective stated above, the strengthened and more operationally effective GATT rules and disciplines, which would be equally applicable to all contracting parties, and the commitments to be negotiated, should encompass all measures affecting directly or indirectly import access and export competition, in particular:

Import access

- quantitative and other non-tariff access restrictions, whether maintained under waivers, protocols of accession or other derogations and exceptions, and all measures not explicitly provided for in the General Agreement, and the matter of conversion of the measures listed above into tariffs;
- tariffs, including bindings;

Subsidies and export competition

- internal support measures (including income and price support) which directly or indirectly affect trade;
- direct budgetary assistance to exports, other payments on products exported and other forms of export assistance.

Export prohibitions and restrictions

- export prohibitions and restrictions.

8. Ministers agree that:

- special and differential treatment to developing countries is an integral element of the negotiations particularly on the strengthened and more operationally effective GATT rules and disciplines;
- government measures on assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of the development programmes of developing countries;
- ways should be developed to take into account the possible negative effects of the reform process on net food importing developing countries.

Non-trade concerns

9. Participants recognize that factors other than trade policy are taken into account in the conduct of their agricultural policies. In the negotiations to achieve the long-term objective, account will be taken of proposals aimed at addressing participants' concerns such as food security.

Implementation

10. Implementation of the first tranche of agreed commitments on the long-term reform programme shall take place in 1991.

Work Programme

11. Participants are invited to advance by December 1989 detailed proposals for the achievement of the long-term objective, including the following:

- the terms and use of an aggregate measurement of support;
- strengthened and more operationally effective GATT rules and disciplines;
- the modalities of special and differential treatment for developing countries;
- sanitary and phytosanitary regulations and the work programme foreshadowed in (C) below;
- tariffication, decoupled income support, and other ways to adapt support and protection;
- ways to take account of the possible negative effects of the reform process on net food-importing developing countries.

12. Not later than the end of 1990, participants will agree on the long-term reform programme and the period of time for its implementation. Soon thereafter, taking into account the different national procedures for implementation of international agreements, participants will notify their plans for meeting the obligations and commitments agreed upon.

Surveillance

13. The reform programme will be subject to multilateral surveillance and other procedures necessary to ensure full compliance with commitments made in the negotiations.

B. SHORT-TERM ELEMENTS

14. With effect from the adoption of this decision and continuing until the formal completion of these negotiations on agriculture by December 1990, participants, within the scope of their existing legislation and their existing GATT rights and obligations, undertake to ensure that current domestic and export support and protection levels in the agricultural sector are not exceeded. Participants undertake to ensure that tariff and non-tariff market access barriers in force at the date of this decision are not subsequently intensified in relation to imports of agricultural products nor extended to additional products, including processed agricultural products. Participants shall be deemed to be in compliance with this undertaking so long as the access opportunities granted to individual products in 1989 and 1990 are not less than those granted on average in 1987 and 1988. Participants shall also ensure that support prices to producers, to be expressed in national currencies[1], that are set or determined directly or indirectly by governments or their agencies are not raised above the level prevailing at the date of this decision or otherwise take actions to ensure that the current levels of support for the commodity concerned are not increased.

15. Participants state their intention to reduce support and protection levels for 1990. This could be done either by using an AMS or by taking specific policy measures. They will notify the undertakings for fulfilling this commitment by October 1989.

Reporting requirements

16. Participants agree to report on their compliance with the above undertakings at six-month intervals. The first report shall be submitted not later than 1 December 1989.

17. Any participant may raise any matter relating to or affecting the observance of the commitments at a meeting of the Negotiating Group on Agriculture.

18. In exceptional circumstances[2] a participant can be relieved by the Negotiating Group on Agriculture of commitments under the above undertakings.

Developing countries

19. Developing countries are not expected to subscribe to the commitments under B.

---

[1] ECU in the case of the EEC.

[2] For particular countries excessive rates of inflation will be taken into account.

C. SANITARY AND PHYTOSANITARY REGULATIONS

20. Ministers endorse harmonization of national regulations as a long-term goal and a work programme embodying the following objectives:

(1) develop harmonization of sanitary and phytosanitary regulations and measures, on the basis of appropriate standards established by relevant international organizations including the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention;

(2) strengthen Article XX so that measures taken to protect human, animal or plant life or health are consistent with sound scientific evidence and use suitable principles of equivalency;

(3) review existing notification and counter-notification procedures to ensure transparency and the existence of an effective notification process for national regulations and bilateral agreements;

(4) develop a consultative process which ensures transparency and allows opportunity for the bilateral resolution of disputes;

(5) improve the effectiveness of the multilateral dispute settlement process within the GATT in order to provide the necessary input of scientific expertise and judgment, relying on relevant international organizations;

(6) assess the possible effects on developing countries of the GATT rules and disciplines for sanitary and phytosanitary measures, and evaluate the need for technical assistance;

(7) examine the possibilities for implementation of the above programme in the context of short-term elements.

TROPICAL PRODUCTS

1. Ministers take note of the results obtained thus far in negotiations and note that these will be implemented by January 1989 except as otherwise indicated*. These results will form an integral part of the overall achievement of the Uruguay Round.

2. In pursuance of their commitment to the objective of achieving the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms as contained in the Declaration of Punta del Este, Ministers agree to pursue negotiations on the seven product groups as identified in Section II, paragraph 46 of document MTN.GNG/13** with due regard, inter alia, to the following elements:

(a) Elimination of duties on unprocessed products.

(b) Elimination or substantial reduction of duties on semi-processed and processed products. These actions would include the objective of eliminating or reducing tariff escalation.

(c) Elimination or reduction of all non-tariff measures affecting trade in these products.

3. All participants agree to engage in such negotiations and make appropriate contributions towards achieving the above objective in accordance with the relevant provisions of the Punta del Este Ministerial Declaration including those contained in its Part I.B.

4. The Negotiating Group on Tropical Products at its next meeting is invited to make appropriate arrangements for continuation of negotiations on the basis of the above understandings.

5. The Negotiating Group shall, before the formal completion of negotiations, conduct an evaluation of the results attained therein in terms of the objectives of the negotiations.

---

*Document MTN.GNG/17 and Add.1. Autonomous unilateral contributions have also been tabled in the Negotiating Group on Tropical Products by Hungary (MTN.GNG/NG6/LT/39), South Africa (MTN.GNG/NG6/LT/45 and Add.1) and Czechoslovskia (MTN.GNG/NG6/LT/47).

**Tropical beverages; spices, flowers and plaiting products; certain oilseeds, vegetable oils and oilcakes; tobacco, rice and tropical roots; tropical fruits and nuts; natural rubber and tropical wood; jute and hard fibres. It was understood that this would not constitute a definition of tropical products nor an exhaustive listing and that other products might be included as negotiations proceed.

GATT ARTICLES

1. Ministers recognize the importance for the GATT system of reaching common views on the large number of issues under consideration in the Negotiating Group on GATT Articles, whose work should be directed towards clarifying the Articles, provisions and disciplines of the General Agreement and improving them as appropriate. This work should also take into account the close relationships between particular issues under discussion in the Group and between these and a number of subjects under negotiation in other Groups.

2. Ministers direct that the work of the Negotiating Group be vigorously pursued. To this end, they urge the Group to define the issues for negotiation with precision and clarity. Any specific proposals should be brought forward as soon as possible, and preferably not later than 31 December 1989.

MTN AGREEMENTS AND ARRANGEMENTS

1. Ministers note that the Group has largely completed the initial phase of clarifying issues and substantive negotiations are beginning to take place since some of the proposals already tabled are being analysed and reviewed and specific texts have been or will be tabled. The work of this Group is important in that:

(a) the MTN Agreements which in some cases clarify and elaborate provisions of the General Agreement deal with very important issues in international trading relations;

(b) the effective implementation of these Agreements, as well as further improvements, where appropriate, could by strengthening the GATT system have considerable bearing on the stability and predictability of trading conditions; and

(c) widened membership of the Agreements by more countries could contribute to improving further the unity and consistency of the GATT system; in this connection, the appropriate and effective use of provisions for special and differential treatment, *inter alia*, could facilitate membership of developing countries.

2. In the light of the above and the progress made so far in the negotiations, Ministers urge the Group to pursue negotiations in this area vigorously, in accordance with the mandate of the Group and the negotiating plan. Early submission of specific texts from participants is encouraged, to expedite the process of negotiation.

SAFEGUARDS

Ministers stress the importance of concluding a comprehensive agreement on safeguards based on the basic principles of the General Agreement which would aim to re-establish multilateral control over safeguards, *inter alia*, by eliminating measures which escape such control. Ministers recognize that such an agreement is vital to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations. Accordingly, they:

(a) take note of the in-depth examination of the specific elements which has contributed to a better understanding of the whole issue;

(b) recognize that, because of the interrelationships between the elements, substantive agreement cannot be reached on individual elements in isolation;

(c) recognize that safeguard measures are by definition of limited duration;

(d) in the light of the decision of the Negotiating Group, authorize its Chairman, with the assistance of the secretariat and in consultation with delegations, to draw up a draft text of a comprehensive agreement as a basis for negotiation, without prejudice to the right of participants to put forward their own texts and proposals, preferably before the end of April 1989; and

(e) agree to begin negotiations on the basis of the draft text by June 1989 at the latest.

SUBSIDIES AND COUNTERVAILING MEASURES

Ministers note that the framework outlined below has been developed from the discussions in the Group. It is intended to guide in a balanced way the conduct of negotiations in the Group with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. The framework does not anticipate or prejudge any specific outcome of the negotiations and cannot prejudice the detailed negotiating positions of any participant on any issue. It is flexible and further issues may be added to it in the course of the negotiations. Further progress in the negotiations will depend on the submission of specific drafting proposals, as provided for in the negotiating plan.

Framework for Negotiations

1. Prohibited Subsidies

1.1 Identification

1.1.1 Normative criteria (e.g. export subsidies - illustrative list)

1.1.2 Other criteria (e.g. quantitative)

1.2 Remedies (countermeasures, compensation, conditions of application, multilateral surveillance)

2. Non-Prohibited but Countervailable or Otherwise Actionable Subsidies

2.1 Conditions for countervailability or actionability

2.1.1 Definition (examples of issues to be considered: charge on the public account, preferentiality, specificity, so-called new practices) and calculation of the amount of a subsidy

2.1.2 Trade effects

2.1.2.1 In the market of the importing country (examples of issues to be considered: determination of injury including the question of cumulation and of minimum market share, causal link, definition of industry)

2.1.2.2 In the market of the subsidizing country (examples of issues to be considered: nullification or impairment, other aspects of import substitution)

2.1.2.3 In the third country market (examples of issues to be considered: displacement, serious prejudice)

2.2 Remedies

2.2.1 Countervailing duties (examples of issues to be considered: standing of petitioners, initiation and conduct of investigation, imposition and duration of countervailing measures, undertakings, sunset clause, amount of duty, circumvention)

2.2.2 Countermeasures and/or compensation (nature, conditions of application, multilateral mechanism)

3. Non-Countervailable, Non-Actionable Subsidies

3.1 Conditions for non-countervailability, non-actionability

3.1.1 Definition (examples of issues to be considered: general availability, non-preferentiality, no trade effects)

3.1.2 Other conditions (e.g. specific purpose, strict time-limits)

3.2 'Special safeguard' procedures

4. Special and Differential Treatment for Developing Countries

5. Notifications and Surveillance

6. Dispute Settlement

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

1. Ministers recognise the importance of the successful conclusion of the multilateral negotiations on trade-related aspects of intellectual property rights, including trade in counterfeit goods, that were initiated by the decision of the CONTRACTING PARTIES at Punta del Este.

2. Ministers recall the relevant provisions of the Punta del Este Declaration, including the objective of strengthening the role of GATT and of bringing about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines, as well as the general principles governing the negotiations set out in I.B of the Punta del Este Declaration, notably paragraphs (iv)-(vii).

3. Ministers agree that the outcome of the negotiations is not prejudged and that these negotiations are without prejudice to the views of participants concerning the institutional aspects of the international implementation of the results of the negotiations in this area, which is to be decided pursuant to the final paragraph of the Punta del Este Declaration.

4. Ministers agree that negotiations on this subject shall continue in the Uruguay Round and shall encompass the following issues:

(a) the applicability of the basic principles of the GATT and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments, including the applicability of GATT procedures;

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations.

5. Ministers agree that in the negotiations consideration will be given to concerns raised by participants related to the underlying public policy objectives of their national systems for the protection of intellectual property, including developmental and technological objectives.

6. In respect of 4(d) above, Ministers emphasise the importance of reducing tensions in this area by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures.

7. The negotiations shall also comprise the development of a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods.

8. The negotiations should be conducive to a mutually supportive relationship between GATT and WIPO as well as other relevant international organisations.

TRADE-RELATED INVESTMENT MEASURES

1. Ministers agree that, drawing on the work of the Group so far, and on the basis of existing and future submissions and proposals by participants, further work of the Negotiating Group shall, with the view of fulfilling the Punta del Este mandate, integrate the following elements into the negotiating process, not necessarily in the order given:

(a) Further identification of the trade restrictive and distorting effects of investment measures that are or may be covered by existing GATT Articles, specifying those Articles.

(b) Identification of other trade restrictive and distorting effects of investment measures that may not be covered adequately by existing GATT Articles but are relevant to the mandate of the Group given by the Punta del Este Ministerial Declaration.

(c) Development aspects that would require consideration.

(d) Means of avoiding the identified adverse trade effects of trade-related investment measures including, as appropriate, new provisions to be elaborated where existing GATT Articles may not cover them adequately.

(e) Other relevant issues, such as the modalities of implementation.

2. In order to facilitate the negotiating process, participants are encouraged to make detailed written submissions, as early as possible in 1989, which provide, *inter alia*, a description of the trade restrictive and distorting effects of investment measures and of the operation and coverage of related GATT Articles.

DISPUTE SETTLEMENT

1. Ministers recommend approval by the CONTRACTING PARTIES of the improvements of the GATT dispute settlement rules and procedures set out below and their application on a trial basis from 1 May 1989 to the end of the Uruguay Round.

2. Ministers decide that the Negotiating Group on Dispute Settlement shall continue its work for the full achievement of the negotiating objective, taking into account proposals which have been presented and without prejudice to positions taken by participants. Such work would include, *inter alia*, further examination of improved and strengthened procedures concerning the implementation of recommendations or rulings of the CONTRACTING PARTIES, as well as of the definition, determination and modalities of compensation, and the issues raised in paragraphs A.2 and G.3 of the Dispute Settlement text in Section III of MTN.GNG/13.

Improvements to the GATT Dispute Settlement Rules and Procedures

A. General Provisions

1. Contracting parties recognize that the dispute settlement system of GATT serves to preserve the rights and obligations of contracting parties under the General Agreement and to clarify the existing provisions of the General Agreement. It is a central element in providing security and predictability to the multilateral trading system.

2. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.

3. Contracting parties agree that the existing rules and procedures of the GATT in the field of dispute settlement shall continue. It is further agreed that the improvements set out below, which aim to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, shall be applied on a trial basis from 1 May 1989 to the end of the Uruguay Round in respect of complaints brought during that period under Article XXII or XXIII; it is also agreed to keep the application of these improvements under review during the remainder of the Round and to decide on their adoption before the end of the Round; to continue negotiations with the aim of further improving and strengthening the GATT dispute settlement system taking into account the experience gained in the application of these improvements.

4. All the points set out in this document shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966.

B. Notification

Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII, as well as arbitration awards within GATT, must be notified to the Council where any contracting party may raise any point relating thereto.

C. Consultations

1. If a request is made under Article XXII:1 or XXIII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting party that requested the holding of consultations may proceed directly to request the establishment of a panel or a working party.

2. If the consultations under Article XXII:1 or XXIII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel or a working party under Article XXIII:2. The complaining party may request a panel or a working party during the sixty day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the GATT Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

4. In cases of urgency, including those which concern perishable goods en route, parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have failed to settle the dispute within a period of thirty days after the request, the complaining party may request the establishment of a panel or a working party.

D. Good Offices, Conciliation, Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel or a working party under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel or working party. The complaining party may request a panel or a working party during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel or working party process proceeds.

3. The Director-General may, acting in an *ex officio* capacity, offer his good offices, conciliation or mediation with the view to assisting contracting parties to settle a dispute.

E. Arbitration

1. Expeditious arbitration within GATT as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all GATT contracting parties sufficiently in advance of the actual commencement of the arbitration process.

3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award.

F. Panel and Working Party Procedures

(a) Establishment of a Panel or a Working Party

The request for a panel or a working party shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel or a working party with other than standard terms of reference, the written request shall include the proposed text of special terms of reference. If the complaining party so requests, a decision to establish a panel or working party shall be taken at the latest at the Council meeting following that at which the request first appeared as an item on the Council's regular agenda, unless at that meeting the Council decides otherwise.*

(b) Standard Terms of Reference

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document L/... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

2. In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

(c) Composition of Panels

1. Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

2. Panels shall be composed of well-qualified governmental and/or non-governmental individuals.

3. The roster of non-governmental panelists shall be expanded and improved. To this end, contracting parties may nominate individuals to serve on panels and shall provide relevant information on their nominee's knowledge of international trade and of the GATT.

---

*References to the Council, made in this paragraph as well as in the following paragraphs, are without prejudice to the competence of the CONTRACTING PARTIES, for which the Council is empowered to act in accordance with normal GATT practice (BISD 26S/215).

4. Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

5. If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.

(d) Procedures for Multiple Complainants

1. Where more than one contracting party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all parties concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

(e) Third Contracting Parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. At the request of the third contracting party, the panel may grant the third contracting party access to the written submissions to

the panel by those parties to the dispute which have agreed to the disclosure of their respective submission to the third contracting party.

(f) Time Devoted to Various Phases of a Panel

1. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

2. Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.

3. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

4. Each party to the dispute shall deposit its written submissions with the secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in the second paragraph of this section and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

5. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within three months.

6. When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case should the period from the establishment of the panel to the submission of the report to the contracting parties exceed nine months.

7. In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs 2 and 4 of Section C. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph 4 of Section G are not affected by any action pursuant to this paragraph.

G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until thirty days after they have been issued to the contracting parties.

2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded. The practice of adopting panel reports by consensus shall be continued, without prejudice to the GATT provisions on decision-making which remain applicable. However, the delaying of the process of dispute settlement shall be avoided.

4. The period from the request under Article XXII:1 or Article XXIII:1 until the Council takes a decision on the panel report shall not, unless agreed to by the parties, exceed fifteen months. The provisions of this paragraph shall not affect the provisions of paragraph 6 of Section F(f).

H. Technical Assistance

1. While the secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the secretariat shall make available a qualified legal expert within the Technical Co-operation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the secretariat.

2. The secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties' experts to be better informed in this regard.

I. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. The contracting parties concerned shall inform the Council of its intentions in respect of implementation of the recommendations or rulings. If it is impracticable to comply immediately with the recommendations or rulings, the contracting party concerned shall have a reasonable period of time in which to do so.

3. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the panel recommendations or rulings.

4. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding on Dispute Settlement.

FUNCTIONING OF THE GATT SYSTEM

1. Ministers agree that:

(a) The decision to launch the Uruguay Round of multilateral trade negotiations was taken against a background of large external imbalances in the major industrial economies, instability in the international monetary system, growing protectionist pressures, and acute debt servicing difficulties in a number of countries, particularly developing countries. In the process of redressing these imbalances, the significance of trade policy making, capable of contributing towards growth and development, needs greater political and institutional recognition.

(b) A solution to problems affecting the functioning of the world economy will require continuing and concerted efforts to improve the stability of the international economic environment and the flow of resources to developing countries. Efforts have been under way for some time and are continuing in international fora to improve the stability of the international economic environment and to deal with the debt problems of developing countries. Progress is being made but more needs to be done.

(c) Difficulties the origins of which lie outside the trade field cannot be redressed through measures taken in the trade field alone. Hence, the importance of efforts to improve other elements of global economic policy making to complement the effective implementation of the improved GATT rules and disciplines to be achieved in the Uruguay Round.

2. The following represent first steps in the three closely linked areas that constitute the particular responsibility of the Negotiating Group on Functioning of the GATT System. They are guided by three general orientations:

(a) First, the key contribution that GATT can make, through the Uruguay Round, towards greater coherence in global economic policy making will be to ensure a further expansion and liberalization of trade as well as a strengthened multilateral trading system which are of vital importance to all contracting parties and which are essential for the promotion of growth and development.

(b) Second, institutional relationships between the GATT and other international institutions responsible for monetary and financial matters can be developed so as to promote a dialogue, within the sphere of competence of each institution, to facilitate policies and actions which enhance the complementarities that exist between them in order to improve the coherence of global economic policy making.

(c) Third, the institutional reinforcement of the GATT would help it to improve its rôle in contributing towards such greater coherence in global economic policy making.

3. The package of decisions set out below covering surveillance of trade policies of contracting parties, greater involvement of Ministers in GATT affairs, and cooperation with the international monetary and financial institutions will help to maintain the rôle of GATT in global economic policy making, and provide a basis for further work by the Negotiating Group in the second half of the Uruguay Round.

Trade Policy Review Mechanism

4. Ministers recommend that the CONTRACTING PARTIES establish a trade policy review mechanism, as follows:

A. Objectives

(i) The purpose of the mechanism is to contribute to improved adherence by all contracting parties to GATT rules, disciplines and commitments, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of contracting parties. Accordingly, the review mechanism will enable the regular collective appreciation and evaluation by the CONTRACTING PARTIES of the full range of individual contracting parties' trade policies and practices and their impact on the functioning of the multilateral trading system. It is not, however, intended to serve as a basis for the enforcement of specific GATT obligations or for dispute settlement procedures, or to impose new policy commitments on contracting parties.

(ii) The assessment to be carried out under the review mechanism will, to the extent relevant, take place against the background of the wider economic and developmental needs, policies and objectives of the contracting party concerned, as well as of its external environment. However, the function of the review mechanism is to examine the impact of a contracting party's trade policies and practices on the multilateral trading system.

B. Reporting

(i) In order to achieve the fullest possible degree of transparency, each contracting party shall report regularly to the CONTRACTING PARTIES. Initial full reports shall be submitted in the year when the contracting party is first subject to review; however, in no case shall the initial report be submitted later than four years after the introduction of the mechanism. Subsequently, full reports shall be provided in years when the contracting party is due for review. Full reports will describe the trade policies and practices pursued by the contracting party or parties concerned, based on an agreed format to be decided upon by the Council. This format may be revised by the Council in the light of experience. Between reviews, contracting parties will provide brief reports when there are any significant changes in their trade policies; an annual update of statistical information will be provided according to the agreed format. Particular account will be taken of difficulties presented to least-developed contracting parties in compiling their reports. The secretariat shall make available technical assistance on request to less-developed contracting parties, and in particular to the least-developed contracting parties. Information contained in country reports should to the greatest extent possible be coordinated with notifications made under GATT provisions.

C. Frequency of Review

(i) The trade policies and practices of all contracting parties will be subject to periodic review. Their impact on the functioning of the multilateral trading system, defined in terms of share of world trade in a recent representative period, will be the determining factor in deciding on the frequency of reviews. The first four trading entities so identified (counting the European Communities as one) will be subject to review every two years. The next sixteen will be reviewed every four years. Other contracting parties will be reviewed every six years, except that a longer period may be fixed for least-developed countries. It is understood that the review of entities having a common external policy covering more than one contracting party shall cover all components of policy affecting trade including relevant policies and practices of the individual contracting parties. Exceptionally, in the event of changes in a contracting party's trade policies or practices which may have a significant impact on its trading partners, the contracting party concerned may be requested by the Council after consultation to bring forward its next review.

(ii) Contracting parties recognize the need to minimize the burden for governments also subject to full consultations under the GATT balance-of-payments provisions. To this end, the Chairman of the Council shall, in consultation with the contracting party or parties concerned, and with the Chairman of the Committee on Balance-of-Payments Restrictions, devise administrative arrangements which would harmonize the normal rhythm of the trade policy reviews with the time-table for balance-of-payments consultations but would not postpone the trade policy review by more than 12 months.

D. Review Body

(i) Trade policy reviews will be carried out by the GATT Council at periodic special meetings.

(ii) In the light of the objectives set out in A above, discussions in the meetings of the Council will, to the extent relevant, take place against the background of the wider economic and developmental needs, policies and objectives of the contracting party concerned, as well as of its external environment. The focus of these discussions will be on the contracting party's trade policies and practices which are the subject of the assessment under the review mechanism.

(iii) The Council will establish a basic plan for the conduct of the reviews. It may also discuss and take note of update reports from contracting parties. The Council will establish a programme of reviews for each year in consultation with the contracting parties directly concerned. In consultation with the contracting party or parties under review, the Chairman may choose discussants who, in their personal capacity, will introduce the discussions in the review body.

(iv) The Council will base its work on the following documentation:

(a) The full report, referred to in paragraph B(i) above, supplied by the contracting party or parties under review.

(b) A report, to be drawn up by the secretariat on its own responsibility, based on the information available to it and that provided by the contracting party or parties concerned. The secretariat should seek clarification from the contracting party or parties concerned of their trade policies and practices.

(v) The reports by the contracting party under review and by the secretariat, together with the summary record of the respective meeting of the Council, will be published promptly after the review.

(vi) These documents will be forwarded to the next regular Session of the CONTRACTING PARTIES, which will take note of them.

E. Implementation and Reappraisal of the Mechanism

The trade policy review mechanism will be implemented on a provisional basis from the date of the adoption of this Decision by the CONTRACTING PARTIES. In the light of the experience gained from its operation, the CONTRACTING PARTIES will review, and if necessary modify, these arrangements at the end of the Uruguay Round.

F. Overview of Developments in the International Trading Environment

Enhanced surveillance requires, in addition, an overview of developments in the international trading environment which are having an impact on the multilateral trading system. Such an overview should also be undertaken by the Council. It should be assisted by an annual report by the Director-General setting out major GATT activities and highlighting significant policy issues affecting the trading system. The enhanced surveillance thus provided would also strengthen the existing 'early warning' aspect of the special meetings of the Council. It is understood that this overview by the Council, together with the trade policy review mechanism, would replace the existing reviews in special Council meetings established under paragraph 24 of the 1979 Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance.

Greater Ministerial Involvement in the GATT

5. Ministers recommend that the CONTRACTING PARTIES decide to meet at Ministerial level at least once every two years, in order, inter alia:

(a) to make a fuller contribution to the direction and content of GATT work;

(b) to reinforce the commitment of governments to the GATT system;

(c) to give greater prominence to GATT in domestic political arenas;

(d) to assess trends in international trade and place these trends in their wider economic and political context;

(e) to enable the CONTRACTING PARTIES to contribute effectively to international discussion at the policy level of the international adjustment process; and by these means

(f) to increase the contribution of the GATT to greater coherence in global economic policy making.

Increasing the Contribution of the GATT to Achieving Greater Coherence in Global Economic Policy Making

6. Ministers recommend that the CONTRACTING PARTIES:

(a) invite the Director-General to approach the heads of the IMF and the World Bank, as a first step, to explore ways to achieve greater coherence in global economic policy making through strengthening the relationship of GATT with other relevant international organizations; and

(b) request him to report back by 1 September 1989, and, in his report, to take into account the views, issues and proposals raised in the context of the Negotiating Group.

Further Work on Improvement of the Functioning of the GATT System

7. Ministers agree that:

(a) the Group should continue to explore other means by which to improve the overall effectiveness and decision making of the GATT;

(b) the Group should also continue work on its third negotiating objective of increasing the contribution of GATT to achieving greater coherence in global economic policy making, including the examination of the other substantive questions which have been raised to date; and

(c) the Group should complete by 30 June 1989 its work on the draft format for country reports under the trade policy review mechanism (see annex to the text on the Functioning of the GATT System in Section II of the report of the GNG).

PART II

NEGOTIATIONS ON TRADE IN SERVICES

1. Ministers reaffirm the objectives for negotiations on trade in services agreed at Punta del Este. Ministers agree that substantial progress has been achieved in pursuit of these objectives.

2. Ministers take note of the report of the GNS to the TNC contained in MTN.GNS/21 which they consider an important basis for further work directed towards the achievement of these negotiating objectives. This work should proceed in a parallel and interrelated fashion.

3. Ministers note the understanding reached on statistics and on existing international arrangements and disciplines as set out in paragraphs 7 and 8 of the GNS report.

4. Work on definition should proceed on the basis that the multilateral framework may include trade in services involving cross-border movement of services, cross-border movement of consumers, and cross-border movement of factors of production where such movement is essential to suppliers. However, this should be examined further in the light of, *inter alia*, the following:

(a) Cross-border movement of service and payment.
(b) Specificity of purpose.
(c) Discreteness of transactions.
(d) Limited duration.

5. Ministers agree that work should proceed, without excluding any sector of trade in services on an *a priori* basis, with a view to reaching agreement on the sectoral coverage under the multilateral framework in accordance, *inter alia*, with the considerations that coverage should permit a balance of interests for all participants, that sectors of export interest to developing countries should be included, that certain sectors could be excluded in whole or in part for certain overriding considerations, and that the framework should provide for the broadest possible coverage of sectors of interest to participants.

6. Ministers agree that, before the concepts, principles and rules which comprise a multilateral framework for trade in services are finally agreed, these concepts, principles and rules will have to be examined with regard to their applicability and the implications of their application to individual sectors and the types of transactions to be covered by the multilateral framework.

7. Ministers agree that negotiations on the elaboration of a multilateral framework of principles and rules for trade in services should proceed expeditiously. To this end, the following concepts, principles and rules are considered relevant:

(a) Transparency

Provisions should ensure information with respect to all laws, regulations and administrative guidelines as well as international agreements relating to services trade to which the signatories are parties through adequate provisions regarding their availability. Agreement should be reached with respect to any outstanding issues in this regard.

(b) Progressive Liberalization

The negotiations should establish rules, modalities and procedures in the multilateral framework agreement that provide for progressive liberalization of trade in services with due respect for national policy objectives including provisions that allow for the application of principles to sectors and measures. Provisions should also be established for further negotiations after the Uruguay Round. Specific procedures may be required for the liberalization of particular sectors.

The aim of these rules, modalities and procedures should be to achieve, in this round and future negotiations, a progressively higher level of liberalization taking due account of the level of development of individual signatories. To this end the adverse effects of all laws, regulations and administrative guidelines should be reduced as part of the process to provide effective market access, including national treatment.

The rules, modalities and procedures for progressive liberalization should provide appropriate flexibility for individual developing countries for opening fewer sectors or liberalizing fewer types of transactions or in progressively extending market access in line with their development situation.

(c) National Treatment

When accorded in conformity with other provisions of the multilateral framework, it is understood that national treatment means that the services exports and/or exporters of any signatory are accorded in the market of any other signatory, in respect of all laws, regulations and administrative practices, treatment 'no less favourable' than that accorded domestic services or services providers in the same market.

(d) Most-Favoured-Nation/Non-Discrimination

The multilateral framework shall contain a provision on m.f.n./non-discrimination.

(e) Market Access

When market access is made available to signatories it should be on the basis that consistent with the other provisions of the multilateral framework and in accordance with the definition of trade in services, foreign services may be supplied according to the preferred mode of delivery.

(f) Increasing Participation of Developing Countries

The framework should provide for the increasing participation of developing countries in world trade and for the expansion of their service exports, including inter alia through the strengthening of their domestic services capacity and its efficiency and competitiveness.

Provisions should facilitate effective market access for services exports of developing countries through, inter alia, improved access to distribution channels and information networks. These provisions should facilitate liberalization of market access in sectors of export interest to developing countries.

Autonomous liberalization of market access in favour of services exports of developing countries should be allowed.

Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated commitments in view of their special economic situation and their development, trade and financial needs.

(g) Safeguards and Exceptions

Further negotiations will be necessary on provisions for safeguards, e.g. for balance-of-payments reasons, and exceptions, e.g. based on security and cultural policy objectives.

(h) Regulatory Situation

It is recognized that governments regulate services sectors, e.g. by granting exclusive rights in certain sectors, by attaching conditions to the operations of enterprises within their markets for consumer protection purposes and in pursuance of macro-economic policies. Asymmetries exist with respect to the degree of development of services regulations in different countries. Consequently, the right of countries, in particular of developing countries, to introduce new regulations is recognized. This should be consistent with commitments under the framework.

8. Other elements mentioned in MTN.GNS/21, as well as new ideas and concepts participants may wish to put forward, will also be considered.

9. It is understood that the acceptability of the multilateral framework will be dependent on the initial level of negotiated commitments of signatories.

Future Work

10. Future work should provide for:

(a) The compilation by the secretariat of a reference list of sectors by 20 April 1989. This process could be assisted by submissions by participants.

(b) Invitation to participants to submit indicative lists of sectors of interest to them with a target date of May 1989.

(c) The process of examining the implications and applicability of concepts, principles and rules for particular sectors and specific transactions should begin as lists become available.

(d) Further work as necessary on the role of international disciplines and arrangements and on the question of definition and statistics.

11. The GNS should endeavour, by the end of 1989, to assemble the necessary elements for a draft which would permit negotiations to take place for the completion of all parts of the multilateral framework and its entry into force by the end of the Uruguay Round.

Attachment D

Draft Final Act (MTN.TNC/W/35/Rev.1)

The 392-page draft Final Act has been submitted to the President of the Senate and the Speaker of the House of Representatives as Attachment D to this report. Due to the considerable length of that document, it has not been attached to additional copies of the report. A limited number of copies are available from the Office of the U.S. Trade Representative, Office of Public Affairs.

MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED
MTN.TNC/W/35/Rev.1
3 December 1990
Special Distribution

Trade Negotiations Committee

DRAFT FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

Revision

This document is a first approximation to the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations.

For the convenience of delegations, an index to the texts contained in this document is contained in an Appendix. In order to facilitate the negotiations, a commentary precedes certain of these texts.

When this text is forwarded to the Brussels meeting of the TNC at Ministerial Level for action, it will be accompanied by the report of the Chairman of the Surveillance Body (MTN.SB/14), by the communications which participants wish to send to the Brussels meeting and by a record of the proceedings of the TNC meeting at official level of 26 November 1990.

DRAFT FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

1. Having met at Ministerial level from 3 to 7 December 1990 at Brussels in order to conclude the Uruguay Round of Multilateral Trade Negotiations, the representatives of the Governments and of the European Communities, members of the Trade Negotiations Committee, agree that the Agreements, Decisions and Understandings on trade in goods, as set out in Annex I, and the General Agreement on Trade in Services, as set out in Annex II, [the Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods, as set out in Annex III[1]] [and institutional provisions as set out in Annex IV], [constitute [three] [four] distinct legal texts] and embody the results of their negotiations. They acknowledge that these texts may be subject to rectifications of a formal character that do not affect the substance or meaning of the texts, except as otherwise indicated.

2. By agreeing to the adoption of the present Final Act these representatives [undertake] [indicate their intention] to submit, as necessary, the legal texts and instruments included in the Annexes for the consideration of their respective competent authorities with a view to seeking approval of these legal texts and instruments in accordance with appropriate procedures of the participant concerned.

3. Participants agree on the desirability of acceptance of [the] Uruguay Round Agreements by all participants with a view to their entry into force as early as possible [and in any event not later than 1 January 1992]. As foreseen in the final paragraph of the Punta del Este Declaration, Ministers meeting also at the occasion of a Special Session of the CONTRACTING PARTIES, to be held [prior to the end of 1991] [not later than 1 December 1991], will decide on the implementation of the Agreements, Decisions and Understandings attached hereto, including the possibility of provisional implementation, and will fix a date for the entry into force of such instruments. [The Ministers will also consider the possibility of implementing [some of] the instruments on a provisional basis.] [The contents of this Final Act and its Annexes shall be applied provisionally among those signatories who notify the Director-General to the General Agreement on Tariffs and Trade, in his capacity as depositary of this Final Act, of their intention to engage in such provisional application, as from the date when [...] signatories effect such notification.]

---

[1] Ministers agreed at the Mid-Term Review that the negotiations on Trade-Related Aspects of Intellectual Property Rights are without prejudice to the views of participants concerning the institutional aspects of the international implementation of the results of the negotiations in this area which is to be decided pursuant to the final paragraph of the Punta del Este Declaration, i.e. by Ministers meeting at a Special Session of the CONTRACTING PARTIES.

4. Participants agree on the desirability of the application by the contracting parties, as from the date of entry into force of the Uruguay Round results, of the General Agreement on Tariffs and Trade on a definitive rather than on a provisional basis.

5. Participants further agree that in order to provide the administrative infrastructure for the international implementation of the Uruguay Round results, it would be desirable to establish [a new Multilateral Trade Organization] [a new organisational structure] which shall service the General Agreement on Tariffs and Trade, [and the Uruguay Round Agreements and shall provide the forum for negotiations of agreements in areas related to trade and development] [shall oversee and ensure the operation of the Uruguay Round Agreements, and shall service negotiations falling within the purview of the Uruguay Round Agreements [and in related trade areas], and take action as appropriate].

6. [The basic elements of an organizational agreement to this effect are contained in Annex IV.] Details of the structure and functioning of [such an agreement] [an organizational agreement] should be worked out by [an Interim Committee] in order to enable the Ministers to adopt the organizational agreement on the occasion of the Ministerial Meeting provided for in paragraph 3 in order that it come into effect at the same time as the entry into force of the Uruguay Round Agreements. [The Interim Committee] shall be serviced by the GATT Secretariat and shall be open to all participants in the Uruguay Round that have adopted this Final Act [and indicated their intention to accept the Uruguay Round Agreements as a whole]. The Director-General of GATT is requested to establish such a Committee within two months after the date of this Final Act.

7. [Without prejudice to the measures on special and more favourable treatment in favour of developing participants which appear in the Annexes, the participants agree that least-developed participants shall be granted a grace period of [...] years as from the date of entry into force of this Final Act, during which they will not be required to apply the new commitments negotiated in the course of the Uruguay Round].[1,2]

[Participants agree on the desirability of granting a grace period of [...] years as from the date of entry into force of this Final Act to the least developed participants during which they should not be required to apply the new commitments negotiated in the course of the Uruguay Round. Such transitional arrangements should be without prejudice to the measures on differential and more favourable treatment in favour of developing country participants which appear in the various annexes.][1]

---

[1] The final form and place of the provisions contained in this paragraph are to be considered in connection with the decision on the implementation of the results of the Uruguay Round, as set out in paragraph 3 above.

[2] The provisions of Part I of the Punta del Este Declaration are relevant.

8. [Participants agree that the Uruguay Round Agreements, [enumerated in Annexes I to III] shall be open for [simultaneous] acceptance [as a whole], by signature or otherwise, by all participants in the Uruguay Round of Multilateral Trade Negotiations.][1] [Participants agree that the Uruguay Round Agreements can only enter into force upon acceptance, by signature or otherwise, of all legal texts and instruments, without exception, that are included in [Annexes I and II].] This is without prejudice to the requirement that such participants who are not contracting parties to the GATT must negotiate their terms of accession to the GATT.

9. This Final Act shall be open for initialling by all participants in the Uruguay Round of Multilateral Trade Negotiations.

10. This Final Act and the texts set out in the Annexes shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish to each participant in the Uruguay Round of Multilateral Trade Negotiations a certified copy thereof.

11. The Annexes to this Final Act form an integral part thereof. The Annexes shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations, as provided for in the respective annexes.

Done at Brussels, this seventh day of December one thousand nine hundred and ninety in a single copy, in the English, French and Spanish languages, each text being authentic.

---

[1] The question of the acceptance by participants in the Uruguay Round who have not accepted Tokyo Round Agreements and Arrangements, of texts resulting from the renegotiation of such Agreements or Arrangements remains to be considered.

ANNEX I

URUGUAY ROUND AGREEMENTS ON TRADE IN GOODS

[The following Agreements, Decisions and Understandings, the texts of which are set out below, are an integral part of the Uruguay Round Agreements.[1]

---

[1] The legal form of each text shall be decided at a later stage.

URUGUAY ROUND (1990) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE[1]

Commentary

Attached hereto is the draft of the Uruguay Round (1990) Protocol to the General Agreement on Tariffs and Trade, relating to the market access negotiations on tariffs and non-tariff measures.

The only outstanding issue relates to the period of implementation of the tariff reductions (as an example, a period of eight years has been inserted in paragraph 2 of the draft).

Negotiators have agreed to hold intensive bilateral market access negotiations with the objective

- of completing these negotiations by the end of the Brussels Ministerial Meeting and
- to annex their respective schedules of concessions to the Protocol, so that the Protocol can be signed by participants in Brussels.

---

[1] Including Natural Resource-Based Products and Tropical Products.

URUGUAY ROUND (1990) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE

The contracting parties to the General Agreement on Tariffs and Trade and the European Communities which participated in the Uruguay Round of Multilateral Trade Negotiations 1986-1990 (hereinafter referred to as "participants"),

HAVING carried out negotiations pursuant to Article XXVIII bis, Article XXXIII and other relevant provisions of the General Agreement on Tariffs and Trade (hereinafter referred to as "the General Agreement"),

HAVE, through their representatives, agreed as follows:

1. The schedule of concessions annexed to this Protocol relating to a participant shall become a Schedule to the General Agreement relating to that participant on the day on which this Protocol enters into force for that participant pursuant to paragraph 7.

2. The tariff reductions agreed upon by each participant shall, except as may be otherwise specified in a participant's schedule, be implemented in equal annual rate reductions beginning on 1 January 1992, and the total reduction shall become effective not later than [1 January 1999]. A participant which begins rate reductions on 1 July 1992 or on a date between 1 January and 1 July 1992 shall, unless otherwise specified in that participant's schedule, make effective [two-eighths] of the total reduction to the final rate on that date, followed by [six] equal instalments beginning 1 January 1994. The reduced rate should in each stage be rounded off to the first decimal. The provisions of this paragraph shall not prevent participants from implementing reductions in fewer stages or at earlier dates than indicated above.

3. The implementation of the concessions contained in the annexed schedules shall, upon request, be subject to multilateral examination by the participants having accepted this Protocol. This would be without prejudice to the rights and obligations of contracting parties under the General Agreement.

4. After the schedule of concessions annexed to this Protocol relating to a participant has become a Schedule to the General Agreement pursuant to the provisions of paragraph 1, such participant shall be free at any time to withhold or to withdraw in whole or in part the concession in such schedule with respect to any product for which the principal supplier is any other participant or any government having negotiated for accession during the Uruguay Round of Multilateral Trade Negotiations, but the

schedule of which, as established in these negotiations, has not yet become a Schedule to the General Agreement. Such action can, however, only be taken after written notice of any such withholding or withdrawal of a concession has been given to the CONTRACTING PARTIES and after consultations have been held, upon request, with any participant or any acceding government, the relevant schedule of concessions relating to which has become a Schedule to the General Agreement and which has a substantial interest in the product involved. Any concessions so withheld or withdrawn shall be applied on and after the day on which the schedule of the participant or the acceding government which has the principal supplying interest becomes a Schedule to the General Agreement.

5.(a) For the purpose of the reference in Article II:1(b) and (c) of the General Agreement to the date of that Agreement, the applicable date in respect of each product which is the subject of a concession provided for in a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

(b) For the purpose of the reference in Article II:6(a) of the General Agreement to the date of that Agreement, the applicable date in respect of a schedule of concessions annexed to this Protocol shall be the date of this Protocol.

6. In cases of modification or withdrawal of concessions relating to non-tariff measures, the provisions of Article XXVIII of the General Agreement and the Procedures for Negotiations under Article XXVIII (BISD 27S/26) shall apply.

7.(a) This Protocol shall be open for acceptance by participants, by signature or otherwise, until 31 December 1991.

(b) This Protocol shall enter into force on 1 January 1991 for those participants which have accepted it on or before that date, and for participants accepting after that date, it shall enter into force on the dates of acceptance.

8. This Protocol shall be deposited with the Director-General to the CONTRACTING PARTIES who shall promptly furnish a certified copy thereof and a notification of each acceptance thereof, pursuant to paragraph 7, to each contracting party to the General Agreement and to the European Communities.

9. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Geneva this seventh day of December one thousand nine hundred and ninety, in a single copy, in the English, French and Spanish languages, each text being authentic. The Schedules annexed hereto are authentic in the English, French and Spanish language as specified in each Schedule.

Appendix I

SCHEDULE ... - (NAME OF PARTICIPANT)

This schedule is authentic only in the [English] [French] [Spanish] language.

PART I

Most-Favoured-Nation Tariff

Tariff item number	Description of products	Base rate of duty (U/B)	Bound rate of duty	Initial negotiating right	Other duties and charges
1	2	3	4	5	6
00.00.00 (at appropriate level)	Manufactured etc. ...	24% [U] [B]	12%	CA	

Appendix II

SCHEDULE ... - (NAME OF PARTICIPANT)

PART II

Preferential Tariff

(If applicable)

Appendix III

SCHEDULE ... - (NAME OF PARTICIPANT)

PART III

Non-Tariff Concessions

Tariff item number	Description of products	Concessions

AGREEMENT ON RULES OF ORIGIN

Commentary

An overall compromise needs to be found on the following issues:

- Whether preferential rules used for the determination of the origin of goods should be included in the coverage of the agreement (Article 1, paragraph 1, 2, Footnote 1 to Articles 2(d) and 3(b)).

- Whether the agreement should contain a commitment for contracting parties to use the same rule of origin for all purposes covered by the agreement (Articles 2 and 3, sub-paragraph (a), Article 10, paragraph 1(a)).

- Whether there should be a requirement for contracting parties to notify in advance changes to their existing rules of origin or the new rules which they intend to introduce and consult on these (Article 6).

- Whether the agreement should provide for disciplines which would remain in effect in the event that the work programme for the harmonization of rules of origin fails to produce the expected outcome (Article 4).

AGREEMENT ON RULES OF ORIGIN

PREAMBLE

The CONTRACTING PARTIES,

NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of the GATT and increase the responsiveness of the GATT system to the evolving international economic environment;

DESIRING to further the objectives of the GATT;

RECOGNIZING that clear and predictable rules of origin and their application facilitate the flow of international trade;

DESIRING to ensure that rules of origin themselves do not create unnecessary obstacles to trade;

DESIRING to ensure that rules of origin do not nullify or impair the rights of contracting parties under the GATT;

RECOGNIZING that it is desirable to provide transparency of laws, regulations, and practices regarding rules of origin;

DESIRING to ensure that rules of origin are prepared and applied in an impartial, transparent, predictable, consistent and neutral manner;

RECOGNIZING the availability of a consultation mechanism and procedures for the speedy, effective and equitable resolution of disputes arising under this agreement;

DESIRING to harmonize and clarify rules of origin;

hereby agree as follows:

PART I

DEFINITIONS AND COVERAGE

Article 1

Rules of Origin

1. For the purposes of this agreement, rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any contracting party to determine the country[1] of origin of goods [provided such rules of origin are not related to contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of Article I:1 of the General Agreement].

2. [Rules of origin referred to in paragraph 1 shall include, all rules of origin used in non-preferential commercial policy instruments, such as the application of: most-favoured-nation treatment under Articles I, II, III, XI and XIII of the General Agreement; anti-dumping and countervailing duties under Article VI of the General Agreement; safeguard measures under Article XIX of the General Agreement; origin marking requirements under Article IX of the General Agreement; and any discriminatory quantitative restrictions or tariff quotas. They shall also include rules of origin used for public procurement and trade statistics.[2]]

---

[1] The word "country", wherever it appears in this agreement, includes the territory of each of the contracting parties. For the purposes of this agreement, the European Communities shall be considered as a contracting party.

[2] It is understood that this provision is without prejudice to those determinations made for purposes of defining "domestic industry" or "like products of domestic industry" or similar terms wherever they apply.

PART II

DISCIPLINES TO GOVERN THE APPLICATION OF RULES OF ORIGIN

Article 2

Disciplines during the transitional period

Until the work programme for the harmonization of rules of origin set out in Part IV below is completed, contracting parties shall ensure that:

[(a) they apply rules of origin equally for all purposes covered by this agreement, as set out in Article 1 above;]

[(b) under their rules of origin, the country to be determined as the origin of a particular good shall be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;]

(c) when they issue administrative determinations of general application, the requirements to be fulfilled are clearly defined. In particular:

- in cases where the criterion of change of tariff classification is applied, such a rule of origin, and any exceptions to the rule, must clearly specify the sub-headings or headings within the tariff nomenclature which are addressed by the rule;
- in cases where the ad valorem percentage criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin;
- in cases where the criterion of manufacturing or processing operation is prescribed, the operation which confers origin on the good concerned shall be precisely specified;

(d) notwithstanding the measure or instrument of commercial policy to which they are linked, their rules of origin are not used as instruments to pursue trade objectives directly or indirectly;[1]

(e) Rules of origin shall not themselves create restrictive, distorting, or disruptive effects on international trade. [They shall not be adapted to specific purposes.] They shall not pose unduly strict requirements [or require the fulfilment of a certain condition not related to manufacturing or processing, such as research and development, as a prerequisite for the determination of the country of origin]. However, costs not directly related to manufacturing or processing may be included for the purposes of the application of an ad valorem percentage criterion consistent with sub-paragraph (c) above;

(f) the rules of origin which they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other contracting parties, irrespective of the affiliation of the manufacturers of the good concerned;[1,2]

(g) their rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(h) [their rules of origin are based on a positive standard. Rules of origin which state what does not confer origin (negative standard) are permissible as part of a clarification of a positive standard [or in individual cases where a positive determination of origin is not necessary]. [However, under exceptional circumstances, contracting parties may apply negative standards to individual cases, if they provide other contracting parties an explanation of their difficulties in applying a positive standard to such individual cases]];

(i) their laws, regulations, judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of Article X:1 of the General Agreement;

(j) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to[3] a good are issued as soon as possible but no later than 150 days of a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid

---

[1] [It is understood that this provision does not apply to rules of origin used for preferential trading arrangements.]

[2] [With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by contracting parties under the GATT.]

[3] In respect of requests made during the first year from entry into force of this agreement, contracting parties shall only be required to issue these assessments as soon as possible.

when a decision contrary to the assessment is made in a review as referred to in sub-paragraph (l) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph (m) below;

(k) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(l) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(m) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 3

Disciplines after harmonization

After the entry into force of harmonized rules of origin in accordance with Part IV below, contracting parties shall ensure that:

[(a) they apply harmonized rules of origin equally for all purposes covered by this agreement, as set out in Article 1 above;]

(b) the harmonized rules of origin which they apply to imports and exports are not more stringent than the rules of origin they apply to determine whether or not a good is domestic and shall not discriminate between other contracting parties, irrespective of the affiliation of the manufacturers of the good concerned;[1,2]

---

[1] [It is understood that this provision does not apply to rules of origin used for preferential trading arrangements.]

[2] [With respect to rules of origin applied for the purposes of government procurement, this provision shall not create obligations additional to those already assumed by contracting parties under the GATT.]

(c) the harmonized rules of origin are administered in a consistent, uniform, impartial and reasonable manner;

(d) their laws, regulations, judicial and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of Article X:1 of the General Agreement;

(e) upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days of a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point of time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in sub-paragraph (g) below. Such assessments shall be made publicly available subject to the provisions of sub-paragraph (h) below;

(f) when introducing changes to their rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations;

(g) any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;

(h) all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

[Article 4

Disciplines if harmonization work programme is otherwise completed

If the work programme set out in Part IV below is completed otherwise than as envisaged in Article 3 above, [contracting parties shall continue to observe the provisions of Article 2 above, in particular paragraphs (a) and (b) thereof] [the CONTRACTING PARTIES shall decide whether to continue, amend or discontinue this agreement].]

PART III

PROCEDURAL ARRANGEMENTS ON NOTIFICATION, REVIEW, CONSULTATION AND DISPUTE SETTLEMENT

Article 5

Institutions

There shall be established under this agreement:

1. A Committee on Rules of Origin (hereinafter referred to as the Committee) composed of the representatives from each of the contracting parties. The Committee shall elect its own Chairman and shall meet as necessary but not less than once a year, for the purpose of affording contracting parties the opportunities to consult on matters relating to the operation of Parts I, II, III and IV of the agreement or the furtherance of its objectives and to carry out such other responsibilities assigned to it under this agreement or by the CONTRACTING PARTIES. Any contracting party may bring a matter to the Committee [for examination]. Where appropriate, the Committee shall request information and advice from the Technical Committee (referred to in paragraph 2 below) on matters related to this agreement. The Committee may also request such other work from the Technical Committee as it considers appropriate for the furtherance of the objectives of this agreement. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Rules of Origin (hereinafter referred to as the Technical Committee) under the auspices of the Customs Co-operation Council as set out in Annex I of this agreement. The Technical Committee shall carry out the technical work called for in Part IV and prescribed in Annex I of this agreement. Where appropriate, the Technical Committee shall request information and advice from the Committee on matters related to this agreement. The Technical Committee may also request such other work from the Committee as it considers appropriate for the furtherance of the objectives of the agreement. The CCC secretariat shall act as the secretariat to the Technical Committee.

[Article 6

Notification and procedures for modification

1. Upon entry into force of this agreement, each contracting party shall notify within 90 days to the secretariat its rules of origin, judicial decisions, and administrative rulings of general application relating to rules of origin in effect on that date. Lists of notifications shall be circulated to contracting parties through the GATT secretariat. If by inadvertence a rule of origin has not been notified, the contracting party concerned shall notify it immediately this fact becomes known.

[2. During the period referred to in Article 2 above, contracting parties introducing changes, other than de minimis changes, to their rules of origin, or introducing new rules of origin, which, for the purpose of this Article, shall include any rule of origin not notified under paragraph 1 above shall [endeavour to]:

(a) publish a notice to that effect at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with the proposal;

(b) notify the proposal to other contracting parties, through the secretariat, at least 75 days before it is to be adopted;

(c) include in the notification a brief description of the proposal, the goods affected and an explanation of the reasons for the proposal;

(d) allow at least 30 days prior to the adoption of the proposal for contracting parties to hold consultations with a view to ensuring that it is as neutral as possible and in conformity with the agreed principles and procedures, as well as with GATT obligations and principles, and take any written comments and the results of consultations into account before finalizing the proposal.

3. Where exceptional circumstances arise or threaten to arise for a contracting party, that contracting party may omit such of the steps enumerated in paragraph 2 as it finds necessary, provided that it shall:

(a) in a manner as prescribed in paragraph 2(b) above notify as soon as possible and in no case later than 10 days after adoption of the proposal, other contracting parties of the proposal and of the nature of the exceptional circumstances involved; and

(b) consult with other contracting parties upon request, as soon as possible and in no case later than 30 days after adoptior of the proposal.]]

Article 7

Review

1. The Committee shall review annually the implementation and operation of this agreement having regard to its objectives. The Committee shall annually inform the CONTRACTING PARTIES of developments during the period covered by such reviews.

2. The Committee shall review the provisions of Parts I, II and III above and propose amendments as necessary to reflect the results of the harmonization work.

3. The Committee, in cooperation with the Technical Committee, shall set up a mechanism to consider and propose amendments to the results of the harmonization work, taking into account the objectives and principles set out in Article 10. This may include instances where the rules need to be made more operational or need to be updated to take into account new production processes as affected by any technological change.

Article 8[1]

Consultation

The provisions of Article XXII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement.

Article 9[1]

Dispute settlement

The provisions of Article XXIII of the General Agreement, as improved and elaborated upon by the Negotiating Group on Dispute Settlement, are applicable to this agreement.

---

[1] It is understood that the procedures on consultation and dispute settlement[, including the possible role of the Committee in this context,] will be re-examined when the legal form of the agreement is examined.

PART IV

HARMONIZATION OF RULES OF ORIGIN

Article 10

1. Objectives and principles

With the objectives of harmonizing rules of origin and *inter alia* providing more certainty in the conduct of world trade, the CONTRACTING PARTIES shall undertake the work programme set out below in conjunction with the Customs Cooperation Council, on the basis of the following principles:

[(a) Rules of origin should be applied equally for all purposes covered by this agreement, as set out in Article 1 above;]

(b) Rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained, or where more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;

(c) Rules of origin should be objective, understandable and predictable;

(d) Notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international trade. They should not pose unduly strict requirements or require the fulfilment of a certain condition not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion;

(e) Rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner;

(f) Rules of origin should be coherent;

(g) Rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.

2. Work programme

(a) The work programme shall be initiated as soon after the Uruguay Round as possible and will be completed within three years of initiation.

(b) The Committee and the Technical Committee provided for in Article 5 of this agreement shall be the appropriate bodies to conduct this work.

(c) To provide for detailed input by the CCC, the Committee shall request the Technical Committee to provide its interpretations and opinions resulting from the work described below on the basis of the principles listed in paragraph 1 of this Article. To ensure timely completion of the work programme for harmonization, such work shall be conducted on a product sector basis, as represented by various chapters or sections of the Harmonized System Tariff Nomenclature.

(i) Wholly obtained and minimal operations or processes

The Technical Committee shall develop harmonized definitions of:

- the goods which are to be considered as being wholly obtained in one country. This work shall be as detailed as possible;
- minimal operations or processes which do not by themselves confer origin to a good.

The results of this work shall be submitted to the Committee within three months of receipt of the request from the Committee.

(ii) Substantial transformation - Change in tariff classification

- The Technical Committee shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use of change in tariff subheading or heading when developing rules of origin for particular products or a product sector and, if appropriate, the minimum change within the nomenclature which meets this criterion.
- The Technical Committee shall divide the above work on a product basis taking into account the chapters or sections of the Harmonized System, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within one year and three months from receipt of the request of the Committee.

(iii) Substantial Transformation - Supplementary Criteria

- Upon completion of the work under (ii) for each product sector or individual product category where the exclusive use of the HS nomenclature does not allow for the expression of substantial transformation, the Technical Committee:

  - shall consider and elaborate upon, on the basis of the criterion of substantial transformation, the use, in a supplementary or exclusive manner, of other requirements, including ad valorem percentages[1] and/or manufacturing or processing operations[2] when developing rules of origin for particular products or a product sector;

  - may provide explanations for its proposals;

  - shall divide the above work on a product basis taking into account the chapters or sections of the Harmonized System, so as to submit results of its work to the Committee at least on a quarterly basis. The Technical Committee shall complete the above work within two years and three months of receipt of the request from the Committee.

3. Role of the GATT

On the basis of the principles listed in paragraph 1 of this Article:

- the Committee shall consider the interpretations and opinions of the Technical Committee periodically in accordance with the time-frames provided in (i), (ii) and (iii) above with a view to endorsing such interpretations and opinions. The Committee may request the Technical Committee to refine or elaborate its work and/or develop new approaches. To assist the Technical Committee, the Committee should provide its reasons for requests for additional work and, as appropriate, suggest alternative approaches;

- upon completion of all the work identified in (i), (ii) and (iii) above, the Committee shall consider the results in terms of their overall coherence.

---

[1] Where the ad valorem criterion is applied, the method for calculating this percentage shall also be indicated in the rules of origin.

[2] Where the criterion of manufacturing or processing operation is prescribed, the operation which confers origin on the product concerned shall be precisely specified.

4. Results of the harmonization work programme and subsequent work

(a) The CONTRACTING PARTIES shall establish the results of the harmonization work in an annex as an integral part of this agreement. The CONTRACTING PARTIES shall establish a time-frame for the entry into force of this annex.

(b) [The contracting parties shall apply the principles laid down in Article 3 in a uniform manner wherever rules of origin are invoked for all purposes referred to in Article 1 as from the entry into force of the harmonized rules of origin.]

N.B. The issue of rules of origin for preferential purposes has not been resolved.

PART V

FINAL PROVISIONS

Article 11

National legislation

Each contracting party accepting or acceding to this agreement shall ensure, not later than the date of entry into force of this agreement for it, the conformity with the provisions of this agreement, of its laws, regulations and administrative practices to determine the country of origin of goods.

Etc.

ANNEX I

Technical Committee on Rules of Origin

1. The on-going responsibilities of the Technical Committee shall include the following:

(a) at the request of any member of the Technical Committee, to examine specific technical problems arising in the day-to-day administration of the rules of origin of contracting parties and to give advisory opinions on appropriate solutions based upon the facts presented;

(b) to furnish information and advice on any matters concerning the origin determination of goods as may be requested by any contracting party or the Committee;

(c) to prepare and circulate periodic reports on the technical aspects of the operation and status of this agreement; and

(d) to review annually the technical aspects of the implementation and operation of this agreement.

2. The Technical Committee shall exercise such other responsibilities as the Committee may request of it.

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by contracting parties or the Committee, in a reasonably short period of time, [particularly in respect of any work related to Article 5].

Representation

4. Each contracting party shall have the right to be represented on the Technical Committee. Each contracting party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a contracting party so represented on the Technical Committee is herein referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers at meetings of the Technical Committee. The GATT secretariat may also attend such meetings with observer status.

5. Members of the Customs Co-operation Council who are not contracting parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

6. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as the Secretary-General) may invite representatives of governments which are neither contracting parties nor members of the Customs Co-operation Council and representatives of international governmental and trade organizations to attend meetings of the Technical Committee as observers.

7. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Meetings

8. The Technical Committee shall meet as necessary, but not less than once a year.

Procedures

9. The Technical Committee shall elect its own chairman and shall establish its own procedures.

AGREEMENT ON PRESHIPMENT INSPECTION

Commentary

The main decision that needs to be taken is on the standard for price verification in Article 2.20(a) and (b).

A number of points have been agreed since the attached text was prepared:

Article 2.6 - Delete the penultimate sentence and insert:

> "However, in emergency situations of the types addressed by Articles XX and XXI of the General Agreement, such additional requirements or changes may be applied to a shipment before the exporter has been informed."

Article 2.20 - Delete from the chapeau ", other than for purposes of customs valuation," and insert footnote 1 to the words "price verification". This footnote reads:

> "The obligations of user contracting parties with respect to the services of preshipment inspection entities in connection with customs valuation shall be the obligations which they have accepted in the General Agreement and related instruments."

Article 7.1 - Delete "not later than" and insert "at the end of".

It is understood that, for the purposes of this agreement, force majeure in Article 2:15 shall mean "irresistible compulsion or coercion, unforeseeable course of events excusing from fulfilment of contract".

It is also understood that technical assistance may be given on a bilateral, plurilateral or multilateral basis.

The International Chamber of Commerce and the International Federation of Inspection Agencies have expressed their willingness in principle to administer the Independent Review Entity referred to in Article 5:1 and consultations have been initiated on the arrangements that would be made to this end.

The legal form of this agreement remains to be examined. The wording of the attached text may need to be adapted in the light of the decision taken on this subject.

AGREEMENT ON PRESHIPMENT INSPECTION

PREAMBLE

NOTING that Ministers on 20 September 1986 agreed that the Uruguay Round of Multilateral Trade Negotiations shall aim to bring about further liberalization and expansion of world trade, strengthen the role of GATT and increase the responsiveness of the GATT system to the evolving international economic environment;

NOTING that a number of developing contracting parties have recourse to preshipment inspection;

RECOGNIZING the need of developing countries to do so for as long and insofar as it is necessary to verify the quality, quantity or price of imported goods;

MINDFUL that such programmes must be carried out without giving rise to unnecessary delays or unequal treatment;

NOTING that this inspection is by definition carried out on the territory of exporter contracting parties;

RECOGNIZING the need to establish an agreed international framework of rights and obligations of both user contracting parties and exporter contracting parties;

RECOGNIZING that the principles and obligations of the General Agreement apply to those activities of preshipment inspection entities that are mandated by governments that are Parties to the General Agreement;

RECOGNIZING that it is desirable to provide transparency of the operation of preshipment inspection entities and of laws and regulations relating to preshipment inspection;

DESIRING to provide for the speedy, effective and equitable resolution of disputes between exporters and preshipment inspection entities arising under this agreement;

The contracting parties hereby agree as follows:

ARTICLE 1

Coverage. Definitions

1.1. This agreement shall apply to all preshipment inspection activities carried out on the territory of contracting parties, whether such activities are contracted or mandated by the government, or any government body, of a contracting party (hereinafter referred to as user contracting party).

1.2. Preshipment inspection activities are all activities relating to the verification of the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported to the territory of the user contracting party.

1.3. The term "preshipment inspection entity" is any entity contracted or mandated by a contracting party to carry out preshipment inspection activities.[1]

ARTICLE 2

Obligations of user contracting parties

Non-discrimination

2.1. User contracting parties shall ensure that preshipment inspection activities are carried out in a non-discriminatory manner, that the procedures and criteria employed in the conduct of these activities are objective and are applied on an equal basis to all exporters affected by such activities. They shall ensure uniform performance of inspection by all the inspectors of the preshipment inspection entities contracted or mandated by them.

Governmental requirements

2.2. User contracting parties shall ensure that in the course of preshipment activities relating to their laws, regulations and requirements, the provisions of Article III:4 of the General Agreement are respected to the extent that these are relevant.

Site of inspection

2.3. User contracting parties shall ensure that all preshipment inspection activities, including the issuance of a Clean Report of Findings or a note of non-issuance, are performed in the customs territory from which the goods are exported or, if the inspection cannot be carried out in that customs territory given the complex nature of the products involved, or if both parties agree, in the customs territory in which the goods are manufactured.

---

[1] It is understood that this provision does not obligate contracting parties to allow government entities of other contracting parties to conduct preshipment inspection activities on their territory.

Standards

2.4. User contracting parties shall ensure that quantity and quality inspections are performed in accordance with the standards defined by the seller and the buyer in the purchase agreement and that, in the absence of such standards, relevant international standards[1] apply.

Transparency

2.5. User contracting parties shall ensure that preshipment inspection activities are conducted in a transparent manner.

2.6. User contracting parties shall ensure that, when initially contacted by exporters, preshipment inspection entities provide to the exporters a list of all the information which is necessary for the exporters to comply with inspection requirements. The preshipment inspection entities shall provide the actual information when so requested by exporters. This information shall include a reference to the laws and regulations of the user contracting parties relating to preshipment inspection activities, and shall also include the procedures and criteria used for inspection and for price and currency exchange rate verification purposes, the exporters' rights vis-à-vis the inspection entities, and the appeals procedures set up under Article 2:21. Additional procedural requirements or changes in existing procedures shall not be applied to a shipment unless the exporter concerned is informed of these changes at the time the inspection date is arranged. However, in an emergency situation, such additional requirements or changes may be applied to a shipment before the exporter has been informed, provided that this does not affect contracts already entered into. This assistance shall not, however, relieve exporters from their obligations in respect of compliance with the import regulations of the user contracting parties.

2.7. User contracting parties shall ensure that the information referred to in Article 2:6 is made available to exporters in a convenient manner, and that the preshipment inspection offices maintained by preshipment inspection entities serve as information points where this information is available.

2.8. User contracting parties shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

---

[1] An international standard is a standard adopted by a governmental or non-governmental body whose membership is open to all contracting parties, one of whose recognized activities is in the field of standardization.

Protection of confidential business information

2.9. User contracting parties shall ensure that preshipment inspection entities treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. User contracting parties shall ensure that preshipment inspection entities maintain procedures to this end.

2.10. User contracting parties shall provide information to contracting parties on request on the measures they are taking to give effect to Article 2:9. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would jeopardize the effectiveness of the preshipment inspection programmes or would prejudice the legitimate commercial interest of particular enterprises, public or private.

2.11. User contracting parties shall ensure that preshipment inspection entities do not divulge confidential business information to any third party, except that preshipment inspection entities may share this information with the government entities that have contracted or mandated them. User contracting parties shall ensure that confidential business information which they receive from preshipment inspection entities contracted or mandated by them is adequately safeguarded. Preshipment inspection entities shall share confidential business information with the governments contracting or mandating them only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

2.12. User contracting parties shall ensure that preshipment inspection entities do not request exporters to provide information regarding:

(a) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;

(b) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;

(c) internal pricing, including manufacturing costs;

(d) profit levels;

(e) the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the entity to conduct the inspection in question. In such cases, the entity shall only request the information necessary for this purpose.

2.13. The information referred to in Article 2:12, which preshipment inspection entities shall not otherwise request, may be released voluntarily by the exporter to illustrate a specific case.

Conflicts of interest

2.14. User contracting parties shall ensure that preshipment inspection entities, bearing in mind also the provisions on protection of confidential business information in Article 2:9-13, maintain procedures to avoid conflicts of interest:

(a) between preshipment inspection entities and any related entities of the preshipment inspection entities in question, including any entities in which the latter have a financial or commercial interest or any entities which have a financial interest in the preshipment inspection entities in question, and whose shipments the preshipment inspection entities are to inspect;

(b) between preshipment inspection entities and any other entities, including other entities subject to preshipment inspection, with the exception of the government entities contracting or mandating the inspections;

(c) with divisions of preshipment inspection entities engaged in activities other than those required to carry out the inspection process.

Delays

2.15. User contracting parties shall ensure that preshipment inspection entities avoid unreasonable delays in inspection of shipments. User contracting parties shall ensure that, once a preshipment inspection entity and an exporter agree on an inspection date, the preshipment inspection entity conducts the inspection on that date unless it is rescheduled on a mutually-agreed basis between the exporter and the preshipment inspection entity, or the preshipment inspection entity is prevented from doing so by the exporter or by force majeure.

2.16. User contracting parties shall ensure that, following receipt of the final documents and completion of the inspection, preshipment inspection entities, within five working days, either issue a Clean Report of Findings or provide a detailed written explanation specifying the reasons for non-issuance. User contracting parties shall ensure that, in the latter case, preshipment inspection entities give exporters the opportunity to present their views in writing and, if exporters so request, arrange for reinspection at the earliest mutually convenient date.

2.17. User contracting parties shall ensure that, whenever so requested by the exporters, preshipment inspection entities undertake, prior to the date of physical inspection, a preliminary verification of price and, where applicable, of currency exchange rate, on the basis of the contract between exporter and importer, the pro forma invoice and, where applicable, the application for import authorization. User contracting parties shall ensure that a price or currency exchange rate that has been accepted by a preshipment inspection entity on the basis of such preliminary verification is not withdrawn, providing the goods conform to the import documentation and/or import licence. They shall ensure that, after a preliminary verification has taken place, preshipment inspection entities immediately inform exporters in writing either of their acceptance or of their detailed reasons for non-acceptance of the price and/or currency exchange rate.

2.18. User contracting parties shall ensure that, in order to avoid delays in payment, preshipment inspection entities send to exporters or to designated representatives of the exporters a Clean Report of Findings as expeditiously as possible.

2.19. User contracting parties shall ensure that, in the event of a clerical error in the Clean Report of Findings, preshipment inspection entities correct the error and forward the corrected information to the appropriate parties as expeditiously as possible.

Price verification

2.20. User contracting parties shall ensure that, in order to prevent over- and under-invoicing, preshipment inspection entities conduct price verification, other than for purposes of customs valuation, according to the following guidelines:

(a) preshipment inspection entities shall only reject a contract price agreed between an exporter and an importer if they can demonstrate that their findings of an unsatisfactory price are based on a verification process which is in conformity with the criteria set out in Article 2:20(b)-(e) below [and indicate a breach of the laws and regulations of the user contracting party];

(b) price verification shall be based upon the prevailing export price, which is the price at which identical or similar goods are offered for export from the same country of exportation [to the same country of importation], at or about the same time under competitive conditions and comparable terms and conditions of sale, in conformity with customary commercial practice, and net of any applicable standard discounts. Appropriate adjustments shall be made for minor differences in the goods being compared, the time of exportation and/or the conditions of delivery;

(c) when conducting price verification, preshipment inspection entities shall make appropriate allowances for the terms of the sales contract and generally applicable adjusting factors pertaining to the transaction; these factors shall include but not be limited to the commercial level and quantity of the sale, delivery periods and conditions, price escalation clauses, quality specifications, special design features, special shipping or packing specifications, order size, spot sales, seasonal influences, licence or other intellectual property fees, and services rendered as part of the contract if these are not customarily invoiced separately; they shall also include certain elements relating to the exporter's price, such as the contractual relationship between the exporter and importer;

(d) the verification of transportation charges shall relate only to the agreed price of the mode of transport in the country of exportation as indicated in the sales contract;

(e) the following shall not be used for price verification purposes:

(i) the selling price in the country of importation of goods produced in such country;

(ii) the price of goods for export from a country other than the country of exportation;

(iii) the cost of production;

(iv) arbitrary or fictitious prices or values.

Appeals procedures

2.21. User contracting parties shall ensure that preshipment inspection entities establish procedures to receive, consider and render decisions concerning grievances raised by exporters, and that information concerning such procedures is made available to exporters in accordance with the provisions of Article 2:6-7. User contracting parties shall ensure that the procedures are developed and maintained in accordance with the following guidelines:

(a) preshipment inspection entities shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive, consider and render decisions on exporters' appeals or grievances;

(b) exporters shall provide in writing to the designated official(s) the facts concerning the specific transaction in question, the nature of the grievance and a suggested solution;

(c) the designated official(s) shall afford sympathetic consideration to exporters' grievances and shall render a decision as soon as possible after receipt of the documentation referred to in (b) above.

Derogation

2.22. By derogation to the provisions of Article 2, user contracting parties shall provide that, with the exception of part shipments, shipments whose value is less than a minimum value applicable to such shipments as defined by the user contracting party shall not be inspected, except in exceptional circumstances. This minimum value shall form part of the information furnished to exporters under the provisions of Article 2:6 above.

ARTICLE 3

Obligations of exporter contracting parties

Non-discrimination

3.1. Exporter contracting parties shall ensure that their laws and regulations relating to preshipment inspection activities are applied in a non-discriminatory manner.

Transparency

3.2. Exporter contracting parties shall publish promptly all applicable laws and regulations relating to preshipment inspection activities in such a manner as to enable other governments and traders to become acquainted with them.

Technical assistance

3.3. Exporter contracting parties shall offer to provide to user contracting parties, if requested, technical assistance directed towards the achievement of the objectives of this agreement on mutually agreed terms.

[ARTICLE 4

National laws and regulations

4.1. All contracting parties shall ensure that any relevant domestic laws and regulations relating to preshipment inspection activities shall not in any way change, limit or inhibit the operation of the preshipment inspection programmes as adopted by the user contracting parties.]

ARTICLE 5

Independent review procedures

5.1. Contracting parties shall encourage preshipment inspection entities and exporters mutually to resolve their disputes. However, two working days after submission of the grievance in accordance with the provisions of Article 2:21, either party may refer the dispute to independent review. Contracting parties shall take such reasonable measures as may be available to them to ensure that the following procedures are established and maintained to this end:

(a) These procedures shall be administered by an independent entity constituted jointly by an organization representing preshipment inspection entities and an organization representing exporters for the purposes of this agreement;

(b) the independent entity referred to in Article 5:1(a) above shall establish a list of experts as follows:

  (i) a section of members nominated by an organization representing preshipment inspection entities;

  (ii) a section of members nominated by an organization representing exporters;

  (iii) a section of independent trade experts, nominated by the independent entity referred to in Article 5:1(a) above.

The geographical distribution of the experts on this list shall be such as to enable any disputes raised under these procedures to be dealt with expeditiously. This list shall be drawn up within two months of the entry into force of this agreement and shall be updated annually. The list shall be publicly available. It shall be notified to the GATT secretariat and circulated to all contracting parties;

(c) an exporter or preshipment inspection entity wishing to raise a dispute shall contact the independent entity referred to in Article 5:1(a) above and request the formation of a panel. The independent entity shall be responsible for establishing a panel. This panel shall consist of three members. The members of the panel shall be chosen so as to avoid unnecessary costs and delays. The first member shall be chosen from section (i) of the above list by the preshipment inspection entity concerned, provided that this member is not affiliated to that entity. The second member shall be chosen from section (ii) of the above list by the exporter concerned, provided that this member is not affiliated to that exporter. The third member shall be chosen from section (iii) of the above list by the independent entity referred to in Article 5:1(a) above. No objections shall be made to any independent trade expert drawn from section (iii) of the above list;

(d) the independent trade expert drawn from section (iii) of the above list shall serve as the chairman of the panel. He shall take the necessary decisions to ensure an expeditious settlement of the dispute by the panel, for instance, whether the facts of the case require the panelists to meet and, if so, where such a meeting shall take place, taking into account the site of the inspection in question;

(e) if the parties to the dispute so agree, one independent trade expert could be selected from section (iii) of the above list by the independent entity referred to in Article 5:1(a) above to review the dispute in question. This expert shall take the necessary decisions to ensure an expeditious settlement of the dispute, for instance taking into account the site of the inspection in question;

(f) the object of the review shall be to establish whether, in the course of the inspection in dispute, the parties to the dispute have complied with the provisions of this agreement. The procedures shall be expeditious and provide the opportunity for both parties to present their views in person or in writing;

(g) decisions by a three-member panel shall be taken by majority vote. The decision on the dispute shall be rendered within eight working days of the request for independent review and be communicated to the parties to the dispute. This time-limit could be extended upon agreement by the parties to the dispute. The panel or independent trade expert shall apportion the costs, based on the merits of the case;

(h) the decision of the panel shall be binding upon the parties to the dispute. [Exporter contracting parties shall reserve their rights to ensure compliance with the decision.] [The preshipment inspection entity may refer the dispute to the user contracting party which will decide whether the decision of the panel shall be given effect, and inform the independent entity accordingly.]

ARTICLE 6

Notification

6.1. Contracting parties shall submit to the GATT secretariat copies of their laws and regulations by which they put this agreement into force, as well as copies of any other laws and regulations relating to preshipment inspection when the agreement comes into force for the contracting party concerned. No changes in the laws and regulations relating to preshipment inspection shall be enforced before such changes have been officially published. They shall be notified to the GATT secretariat immediately after their publication. The GATT secretariat shall inform the contracting parties of the availability of this information.

ARTICLE 7

Review

7.1. Not later than the end of the second year from the entry into force of this agreement and every three years thereafter, the CONTRACTING PARTIES shall review its provisions, implementation and operation, taking into account the objectives thereof and experience gained in its operation. As a result of such review, the CONTRACTING PARTIES may amend the provisions of the agreement.

ARTICLE 8

Consultation

8.1. Contracting parties shall consult with other contracting parties upon request with respect to any matter affecting the operation of this agreement. In such cases, the provisions of Article XXII of the General Agreement, as amended by the Uruguay Round, shall apply.

ARTICLE 9

Dispute settlement

9.1. Any disputes among contracting parties regarding the operation of this agreement shall be subject to the provisions of Article XXIII of the General Agreement, as amended by the Uruguay Round.

ARTICLE 10

Final provisions

10.1. Contracting parties shall take the necessary measures for the implementation of the present agreement.

10.2. Contracting parties shall ensure that their laws and regulations shall not be contrary to the provisions of this agreement.

ANTI-DUMPING

Commentary

Negotiations have revealed that basic differences continue to exist regarding, inter alia, the following points:

1. What changes need to be made in the way dumping margins are calculated? In particular,

    - to what extent should actual data be used in establishing dumping margins?
    - if averaging is used to establish a home market price, should averaging also be used to establish the export market price in all cases?
    - in determining whether the home market price is below the cost of production, what is the appropriate period for cost recovery?

2. What changes need to be made in the way material injury is established? In particular, to what extent, if any, should small margins of dumping and small import quantities be ignored?

3. What anti-circumvention provisions are needed? In particular, to what extent, if any, should third-country manufacturing be covered?

Political decisions are needed to overcome differences on these questions, which have not been resolved in consultations and negotiations based on draft anti-dumping texts of 9 July, 14 August, 15 November and 23 November.

AGREEMENT (1990) ON TECHNICAL BARRIERS TO TRADE

Commentary

One issue remains to be decided:

Local government bodies (square brackets in Articles 3 and 7):

- A compromise needs to be found between the proposal that the text of the Agreement should continue to provide best endeavours obligation to ensure the compliance of local government bodies with the substantive obligations under the Agreement and exempt local government from the obligation of advance notification and the proposal that the text should place a "shall" obligation on Parties and that there should be no exemption from the notification obligation.

- Whether the proposed provisions of Article XXIV:12 of GATT can be used as a basis for the text relating to the obligations of Parties to ensure the compliance of local government bodies.

- Whether transparency of the regulatory activities of local government bodies can be improved through means that are less burdensome than notification procedures.

Since the text in brackets on Article 14 on consultation and dispute settlement was prepared, it has been agreed on an ad referendum basis that the general dispute settlement procedures of GATT shall apply mutatis mutandis to this Agreement and that there is an explicit reference in these procedures to the possibility that panel call on the expertise of a technical expert group on questions of a technical nature.

The relation of the TBT Agreement to the outcome of the negotiations on sanitary and phytosanitary measures under the Negotiating Group on Agriculture will also need to be addressed.

Article 15 concerning the final provisions and the legal form of this agreement will need to be reverted to in the light of the decision taken on this subject.

AGREEMENT (1990) ON TECHNICAL BARRIERS TO TRADE

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to the Agreement on Technical Barriers to Trade (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Recognizing the important contribution that international standards and conformity assessment systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and conformity assessment systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

Hereby agree as follows:

Article 1

General provisions

1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.

1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.

[1.5 The relationship of this Agreement to the outcome of the negotiations on sanitary and phyto-sanitary measures in the Negotiating Group on Agriculture to be addressed.]

1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

TECHNICAL REGULATIONS AND STANDARDS

Article 2

Preparation, adoption and application of technical regulations by central government bodies

With respect to their central government bodies:

2.1 Parties shall ensure that in respect of technical regulations, products imported from the territory of any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Parties shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia, available scientific and technical information, related processing technology or intended end uses of products.

2.3 Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Parties shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.5 A Party preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Parties shall, upon the request of another Party, explain the justification for that technical regulation in terms of the provisions of Article 2, paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in Article 2, paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Parties shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

2.7 Parties shall give positive consideration to accepting as equivalent technical regulations of other Parties. even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

2.8 Wherever appropriate, Parties shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Parties, Parties shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Parties through the GATT secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale; such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Parties, particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.10 Subject to the provisions in the lead-in to Article 2, paragraph 9, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 2, paragraph 9 as it finds necessary provided that the Party, upon adoption of a technical regulation, shall:

2.10.1 notify immediately other Parties through the GATT secretariat of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;

2.10.2 upon request, provide other Parties with copies of the technical regulation;

2.10.3 without discrimination, allow other Parties to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.11 Parties shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties to become acquainted with them.

2.12 Except in those urgent circumstances referred to in Article 2, paragraph 10, Parties shall allow a reasonable interval between the publication of a technical regulation and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to the requirements of the importing Party.

Article 3

Preparation, adoption and application of technical regulations by local government bodies and non-governmental bodies

[3.1 Parties shall ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 2, noting that:

3.1.1 notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Party concerned; and that

3.1.2 contacts with other Parties, including the notifications, provision of information, comments and discussion referred to in Article 2, paragraphs 9 and 10, may be required to take place through the Party concerned.]

Alternative text

[3.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies and non-governmental bodies within their territories comply with the provisions of Article 2, with the exception of the obligation to notify proposed technical regulations. Contacts with other Parties may be required to take place through the Party concerned. In addition, Parties shall not take measures which require or encourage such bodies to act in a manner inconsistent with the provisions of Article 2.]

Article 4

Preparation, adoption and application of standards

4.1 Parties shall ensure that their central government standardizing bodies accept and comply with the code of good practice for the preparation, adoption and application of standards in Annex 3 to this Agreement. They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this code of good practice. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the code of good practice in Annex 3. The obligations of Parties with respect to compliance of standardizing bodies with the provisions of the code of good practice shall apply irrespective of whether or not a standardizing body has accepted the code of good practice.

4.2 Standardizing bodies that have accepted and are complying with the code of good practice in Annex 3 shall be acknowledged by the Parties as complying with the principles of this Agreement.

CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS

Article 5

Procedures for assessment of conformity by central government bodies

5.1 Parties shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Parties:

5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Parties under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;

5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

5.2 When implementing the provisions of Article 5, paragraph 1, Parties shall ensure that:

5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Parties than for like domestic products;

5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body as soon as possible transmits the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;

5.2.4 the confidentiality of information about products originating in the territories of other Parties arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;

5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Parties are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;

5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;

5.2.7 whenever specifications of a product are changed subsequent to its determination of conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;

5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.

5.3 Nothing in Article 5, paragraphs 1 and 2 shall prevent Parties from carrying out reasonable spot checks within their territories.

5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Parties shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Parties concerned, for, inter alia such reasons as national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Parties shall play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.

5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Parties, Parties shall:

5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;

5.6.2 notify other Parties through the GATT secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

5.6.3 upon request, provide to other Parties particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;

5.6.4 without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.7 Where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may omit such of the steps enumerated in Article 5, paragraph 6, as it finds necessary provided that the Party, upon adoption of the procedure, shall:

5.7.1 notify immediately other Parties through the GATT secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;

5.7.2 upon request, provide other Parties with copies of the rules of the procedure;

5.7.3 without discrimination, allow other Parties to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

5.8 Parties shall ensure that all conformity assessment procedures which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties to become acquainted with them.

5.9 Except in those urgent circumstances referred to in Article 5, paragraph 7, Parties shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures and their entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to the requirements of the importing Party.

Article 6

Recognition of conformity assessment by central government bodies

With respect to their central government bodies:

6.1 Without prejudice to the provisions of Article 6, paragraphs 3 and 4, Parties shall ensure, whenever possible, that results of conformity assessment procedures in other Parties are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:

(a) adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Party, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;

(b) limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Party.

6.2 Parties shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in Article 6, paragraph 1.

6.3 Parties are encouraged, at the request of other Parties, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Parties may require that such agreements fulfil the criteria of Article 6, paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

6.4 Parties are encouraged to permit participation of conformity assessment bodies located in the territories of other Parties in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.

Article 7

Procedures for assessment of conformity by local government bodies

[7.1 Parties shall ensure that local government bodies within their territories comply with the provisions of Articles 5 and 6, noting that:

7.1.1 notification shall not be required in cases where a local government body acts only as a sub-contractor for a central government body; and

7.1.2 contacts with other Parties including the notifications, provision of information, comments and discussion referred to in Article 5, paragraphs 6 and 7, may be required to take place through the Party concerned.]

Alternative text

[7.1 Parties shall take such reasonable measures as may be available to them to ensure that local government bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. Contacts with other Parties may be required to take place through the Party concerned. In addition, Parties shall not take measures which require or encourage such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

7.2 Parties shall ensure that their central government bodies rely on conformity assessment procedures operated by local government bodies only if these bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.]

Article 8

Procedures for assessment of conformity by non-governmental bodies

8.1 Parties shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.

8.2 Parties shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.

Article 9

International and regional systems

9.1 Where a positive assurance of conformity with a technical regulation or standard is required, Parties shall, wherever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein.

9.2 Parties shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment, in which relevant bodies within their territories are members or participants, comply with the provisions of Articles 5 and 6. In addition, Parties shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.

9.3 Parties shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.

INFORMATION AND ASSISTANCE

Article 10

Information about technical regulations, standards and conformity assessment procedures

10.1 Each Party shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Parties and interested parties in other Parties as well as to provide the relevant documents regarding:

10.1.1 any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;

10.1.2 any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;

10.1.3 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional bodies of which such bodies are members or participants;

10.1.4 the membership and participation of the Party, or of relevant central or local government bodies within its territory, in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements;

10.1.5 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and

10.1.6 the location of the enquiry points mentioned in Article 10, paragraph 3.

10.2 If, however, for legal or administrative reasons more than one enquiry point is established by a Party, that Party shall provide to the other Parties complete and unambiguous information on the scope of each of these enquiry points. In addition, that Party shall ensure that any enquiries addressed to an incorrect enquiry point shall promptly be conveyed to the correct enquiry point.

10.3 Each Party shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from other Parties and interested parties in other Parties as well as to provide the relevant documents or information as to where they can be obtained regarding:

10.3.1 any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and

10.3.2 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by non-governmental bodies, or by regional bodies of which such bodies are members or participants;

10.3.3 the membership and participation of relevant non-governmental bodies within its territory in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements.

10.4 Parties shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Parties, or by interested parties in other Parties, in accordance with the provisions of this Agreement, they are supplied at an equitable price (if any) which shall, apart from the real cost of delivery, be the same for the nationals of the Party concerned or of any other Party.

10.5 Developed country Parties shall, if requested by other Parties, provide, in English French or Spanish, translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.

10.6 The GATT secretariat will, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Parties and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Parties to any notifications relating to products of particular interest to them.

10.7 Whenever a Party has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures, which may have a significant effect on trade, at least one Party to the agreement shall notify other Parties through the GATT secretariat of the products to be covered by the agreement and include a brief description of the agreement. Parties concerned are encouraged to enter, upon request, into consultations with other Parties for the purposes of concluding similar agreements or of arranging for their participation in such agreements.

10.8 Nothing in this Agreement shall be construed as requiring:

10.8.1 the publication of texts other than in the language of the Party;

10.8.2 the provision of particulars or copies of drafts other than in the language of the Party except as stated in Article 10, paragraph 5; or

10.8.3 Parties to furnish any information, the disclosure of which they consider contrary to their essential security interests.

10.9 Notifications to the GATT secretariat shall be in English, French or Spanish.

10.10 Parties shall designate a single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures under this Agreement except those included in Annex 3.

10.11 If, however, for legal or administrative reasons the responsibility for notification procedures is divided among two or more central government authorities, the Party concerned shall provide to the other Parties complete and unambiguous information on the scope of responsibility of each of these authorities.

Article 11

Technical assistance to other Parties

11.1 Parties shall, if requested, advise other Parties, especially the developing countries, on the preparation of technical regulations.

11.2 Parties shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.

11.3 Parties shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Parties, especially the developing countries, and shall grant them technical assistance on mutually agreed terms and conditions regarding:

11.3.1 the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and

11.3.2 the methods by which their technical regulations can best be met.

11.4 Parties shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Parties, especially the developing countries, and shall grant them technical assistance, on mutually agreed terms and conditions, regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Party.

11.5 Parties shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance, on mutually agreed terms and conditions, regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Party receiving the request.

11.6 Parties which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Parties, especially the developing countries, and shall grant them technical assistance, on mutually agreed terms and conditions, regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.

11.7 Parties shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Parties, especially the developing countries, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.

11.8 In providing advice and technical assistance to other Parties in terms of Article 11, paragraphs 1 to 7, Parties shall give priority to the needs of the least-developed countries.

Article 12

Special and differential treatment of developing countries

12.1 Parties shall provide differential and more favourable treatment to developing country Parties to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.

12.2 Parties shall give particular attention to the provisions of this Agreement concerning developing countries' rights and obligations and shall take into account the special development, financial and trade needs of developing countries in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.

12.3 Parties shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing countries, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing countries.

12.4 Parties recognize that, although international standards, guides or recommendations may exist, in their particular technological and socio-economic conditions, developing countries adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Parties therefore recognize that developing countries should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

12.5 Parties shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Parties, taking into account the special problems of developing countries.

12.6 Parties shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing countries, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing countries.

12.7 Parties shall, in accordance with the provisions of Article 11, provide technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing countries. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting country and in particular of the least-developed countries.

12.8 It is recognized that developing countries may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing countries, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Parties, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing countries are able to comply with this Agreement, the Committee is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall in particular, take into account the special problems of the least-developed countries.

12.9 During consultations, developed countries shall bear in mind the special difficulties experienced by developing countries in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing countries with their efforts in this direction, developed countries shall take account of the special needs of the former in regard to financing, trade and development.

12.10 The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing countries on national and international levels.

INSTITUTIONS, CONSULTATION AND DISPUTE SETTLEMENT

Article 13

The Committee on Technical Barriers to Trade

There shall be established under this Agreement:

13.1 A Committee on Technical Barriers to Trade composed of representatives from each of the Parties (hereinafter referred to as "the Committee"). The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Parties.

13.2 Working parties, technical expert groups, panels or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.

[13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies, e.g. the Joint FAO/WHO Codex Alimentarius Commission. The Committee shall examine this problem with a view to minimizing such duplication. - This paragraph to be addressed subsequently.]

Article 14

Consultation and dispute settlement

[Article 14.1

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall be subject to the procedures of Articles XXII and XXIII of the GATT, including the Dispute Settlement Procedures as adopted by the CONTRACTING PARTIES, and shall take place under the auspices of the Committee on Technical Barriers to Trade.

Article 14.2

At the request of a Party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts. Technical expert groups shall make such findings as will assist the panel in its work, including *inter alia* and if appropriate, findings concerning the detailed scientific judgement involved.

Article 14.3

Technical expert groups shall be governed by the procedures of Annex 2.

Article 14.4

Levels of obligation

The dispute settlement provisions set out above can be invoked in cases where a Party considers that another Party has not achieved satisfactory results under Articles ... and ... and its trade interests are significantly affected. In this respect, such results shall be equivalent to those envisaged in Articles ... and ... as if the body in question were a Party.

Article 14.5

Retroactivity

To the extent that a Party considers that technical regulations, standards, conformity assessment procedures which exist at the time of entry into force of this Agreement are not consistent with the provisions of this Agreement, such regulations, standards, conformity assessment procedures shall be subject to the provisions in Articles 13 and 14 of this Agreement, insofar as they are applicable.]

FINAL PROVISIONS

Article 15

Final Provisions

[To be addressed subsequently.]

ANNEX 1

TERMS AND THEIR DEFINITIONS FOR THE PURPOSE OF THIS AGREEMENT

The terms presented in the fifth edition of the ISO/IEC Guide 2, General Terms and Their Definitions Concerning Standardization and Related Activities, and in the draft amendment sheet to this Guide, as it stood on 18 October 1990 shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide and in the amendment sheet thereto taking into account that services are excluded from the coverage of this Agreement.

For the purpose of this Agreement, however, the following definitions shall apply:

1. Technical regulation

Document which lays down characteristics for products, processes and production methods including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Explanatory note

The definition in ISO/IEC Guide 2 is not self-contained, but based on the so-called "building block" system.

2. Standard

For the term "Standard" the following definition shall apply:

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products, processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

Explanatory note

The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This agreement deals only with technical regulations, standards and conformity assessment procedures related to products processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This agreement covers also documents that are not based on consensus.

3. Conformity assessment procedures

Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

> Explanatory note: Conformity assessment procedures include, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

4. International body or system

Body or system whose membership is open to the relevant bodies of at least all Parties to this Agreement.

5. Regional body or system

Body or system whose membership is open to the relevant bodies of only some of the Parties.

6. Central government body

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

> Explanatory note:
>
> In the case of the European Economic Community the provisions governing central government bodies apply. However, regional bodies or conformity assessment systems may be established within the European Economic Community, and in such cases would be subject to the provisions of this Agreement on regional bodies or certification systems.

7. Local government body

Government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

8. Non-governmental body

Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

ANNEX 2

TECHNICAL EXPERT GROUPS

[The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14.

1. Technical expert groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

2. Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

3. Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

4. The Parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government or person supplying the information.

5. The technical expert group should submit a draft report to the Parties concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report.]

ANNEX 3

CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS

GENERAL PROVISIONS

A. For the purposes of this code the definitions in Annex 1 of this Agreement shall apply.

B. This code is open to acceptance by any standardizing body within the territory of a Party to the GATT Agreement on Technical Barriers to Trade, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Party to the above Agreement; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Party to the above Agreement (hereafter collectively called 'standardizing bodies' and individually 'the standardizing body').

C. Standardizing bodies that have accepted or withdrawn from this code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

SUBSTANTIVE PROVISIONS

D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Party to the GATT Agreement on Technical Barriers to Trade no less favourable than that accorded to like products of national origin and to like products originating in any other country.

E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view, to or with the effect of, creating unnecessary obstacles to international trade.

F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.

G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part within the limits of its resources in the preparation by relevant international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Party, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

H. The standardizing body within the territory of a Party shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.

I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.

J. At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.

The work programme shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva.

The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.

L. Before adopting a standard, the standardizing body shall allow a period of at least sixty days for the submission of comments on the draft standard by interested parties in a Party to the GATT Agreement on Technical Barriers to Trade. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

M. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. Any fees charged for this service shall, apart form the real cost of delivery, be the same for domestic and foreign parties.

N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting . Comments received through standardizing bodies that have accepted this code of good practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.

O. Once the standard has been adopted, it shall be promptly published.

P. On the request of any interested party in a Party to the GATT Agreement on Technical Barriers to Trade, the standardizing body shall promptly provide or arrange to provide a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real costs of delivery, be the same for foreign and domestic parties.

Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this code presented by standardizing bodies that have accepted this code of good practice. It shall make an objective effort to solve any complaints.

Recommendation of the Committee on Technical Barriers to Trade

The CONTRACTING PARTIES invite the Committee on Technical Barriers to Trade to recommend that the GATT secretariat reach an understanding with the ISO to establish an information system under which:

1. ISONET members shall transmit to the ISO/IEC Information Centre in Geneva the notifications referred to in paragraphs C and J of the code of good practice for the preparation, adoption and application of standards in Annex 3 to the GATT Agreement on Technical Barriers to Trade, in the manner indicated there;

2. the following (alpha)numeric classification systems shall be used in the work programmes mentioned above:

   (a) a standards classification system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the subject matter;

   (b) a stage code system which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the stage of development of the standard; for this purpose, at least five stages of development should be distinguished: (1) the stage at which the decision to develop a standard has been taken, but technical work has not yet begun; (2) the stage at which technical work has begun, but the period for the submission of comments has not yet started; (3) the stage at which the period for the submission of comments has started, but has not yet been completed; (4) the stage at which the period for the submission of comments has been completed, but the standard has not yet been adopted; and (5) the stage at which the standard has been adopted;

   (c) an identification system covering all international standards which would allow standardizing bodies to give for each standard mentioned in the work programme an (alpha)numeric indication of the international standard(s) used as a basis;

3. the ISO/IEC Information Centre shall promptly convey to the GATT secretariat copies of any notifications referred to in paragraph C of the code of good practice;

4. the ISO/IEC Information Centre shall regularly publish the information received in the notifications made to it under paragraphs C and J of the code of good practice; this publication, for which a reasonable fee may be charged, shall be available to ISONET members and through the GATT secretariat, to the Parties to the Agreement on Technical Barriers to Trade.

Decision of the Committee on Technical Barriers to Trade

The CONTRACTING PARTIES invite the Committee on Technical Barriers to Trade to decide, without prejudice to provisions on consultation and dispute settlement, that, in conformity with Article 13, paragraph 1, it shall at least once a year review the publication provided by the ISO/IEC Information Centre on information received according to the code of good practice in Annex 3 of the Agreement, for the purpose of affording Parties opportunity of discussing any matters relating to the operation of that code.

In order to facilitate this discussion, the GATT secretariat is requested to provide a list by country of all standardizing bodies that have accepted the code of good practice, as well as a list of those standardizing bodies that have accepted or withdrawn from the code since the previous review.

The GATT secretariat is also requested to distribute promptly to the Parties copies of the notifications it receives from the ISO/IEC Information Centre.

AGREEMENT (1990) ON IMPORT LICENSING PROCEDURES

Commentary

The text of the revised Agreement is agreed *ad referendum*. However, one delegation maintains a reservation pending agreement that a GATT working party be established to develop rules in the area of export licensing procedures in the post-Uruguay Round period.

AGREEMENT (1990) ON IMPORT LICENSING PROCEDURES

Preamble

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement on Import Licensing Procedures (hereinafter referred to as "Parties" and "this Agreement");

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT");

Taking into account the particular trade, development and financial needs of developing countries;

Recognizing the usefulness of automatic import licensing for certain purposes and that such licensing should not be used to restrict trade;

Recognizing that import licensing may be employed to administer measures such as those adopted pursuant to the relevant provisions of the GATT;

Recognizing the provisions of the GATT as they apply to import licensing procedures;

Desiring to ensure that import licensing procedures are not utilized in a manner contrary to GATT principles and obligations;

Recognizing that the flow of international trade could be impeded by the inappropriate use of import licensing procedures;

Convinced that import licensing, particularly non-automatic import licensing, should be implemented in a transparent and predictable manner;

Recognizing that non-automatic licensing procedures should be no more administratively burdensome than absolutely necessary to administer the relevant measure;

Desiring to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices;

Desiring to provide for a consultative mechanism and the speedy, effective and equitable resolution of disputes arising under this Agreement;

Hereby agree as follows:

Article 1: General Provisions

1. For the purpose of this Agreement, import licensing is defined as administrative procedures[1] used for the operation of import licensing regimes requiring the submission of an application or other documentation (other than that required for customs purposes) to the relevant administrative body as a prior condition for importation into the customs territory of the importing Party.

2. The Parties shall ensure that the administrative procedures used to implement import licensing régimes are in conformity with the relevant provisions of the GATT including its annexes and protocols, as interpreted by this Agreement, with a view to preventing trade distortions that may arise from an inappropriate operation of those procedures, taking into account the economic development purposes and financial and trade needs of developing countries.[2]

3. The rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner.

4. The rules and all information concerning procedures for the submission of applications, including the eligibility of persons, firms, and institutions to make such applications, the administrative body(ies) to be approached, and the lists of products subject to the licensing requirement shall be published in the sources notified to the Committee, in such a manner as to enable governments and traders to become acquainted with them. Such publication shall take place whenever practicable, twenty-one days prior to the effective date of the requirement but in all events not later than such effective date. Any exception, derogations or changes in or from the rules concerning licensing procedures or the list of products subject to import licensing shall also be published in the same manner and within the same time periods as specified above. Copies of these publications shall also be made available to the GATT secretariat.

Parties who wish to make comments in writing shall be provided the opportunity to discuss these comments upon request. The concerned Party shall give due consideration to these comments and results of discussion.

5. Application forms and where applicable, renewal forms shall be as simple as possible. Such documents and information as are considered strictly necessary for the proper functioning of the licensing régime may be required on application.

---

[1] Those procedures referred to as "licensing" as well as other similar administrative procedures.

[2] Nothing in this Agreement shall be taken as implying that the basis, scope or duration of a measure being implemented by a licensing procedure is subject to question under this Agreement.

6. Application procedures and, where applicable, renewal procedures shall be as simple as possible. Applicants shall be allowed a reasonable period for the submission of license applications. Where there is a closing date, this period should be at least twenty-one days with provision for extension in circumstances where insufficient applications have been received within this period. Applicants shall have to approach only one administrative body in connection with an application. Where it is strictly indispensable to approach more than one administrative body, applicants shall not need to approach more than three administrative bodies.

7. No application shall be refused for minor documentation errors which do not alter basic data contained therein. No penalty greater than necessary to serve merely as a warning shall be imposed in respect of any omission or mistake in documentation or procedures which is obviously made without fraudulent intent or gross negligence.

8. Licensed imports shall not be refused for minor variations in value, quantity or weight from the amount designated on the licence due to differences occurring during shipment, differences incidental to bulk loading and other minor differences consistent with normal commercial practice.

9. The foreign exchange necessary to pay for licensed imports shall be made available to licence holders on the same basis as to importers of goods not requiring import licences.

10. With regard to security exceptions, the provisions of Article XXI of the GATT apply.

11. The provisions of this Agreement shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 2: Automatic Import Licensing[1]

1. Automatic import licensing is defined as import licensing where approval of the application is granted in all cases, and in accordance with the requirements of Article 2.2(a).

2. The following provisions,[2] in addition to those in paragraphs 1 to 11 of Article 1 and paragraph 1 of Article 2 above, shall apply to automatic import licensing procedures:

(a) Automatic licensing procedures shall not be administered in a manner so as to have restricting effects on imports subject to automatic licensing. Automatic licensing procedures shall be deemed to have trade restricting effects unless, inter alia:

(i) any person, firm or institution which fulfils the legal requirements of the importing Party for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licences;

(ii) applications for licences may be submitted on any working day prior to the customs clearance of the goods;

(iii) applications for licences when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of ten working days.

(b) Parties recognize that automatic import licensing may be necessary whenever other appropriate procedures are not available. Automatic import licensing may be maintained as long as the circumstances which gave rise to its introduction prevail and as long as its underlying administrative purposes cannot be achieved in a more appropriate way.

---

[1] Those import licensing procedures requiring a security which have no restrictive effects on imports, are to be considered as falling within the scope of paragraphs 1 and 2 of Article 2 below.

[2] A developing country Party, which has specific difficulties with the requirements of sub-paragraphs a(ii) and a(iii) below may, upon notification to the Committee referred to in paragraph 1 of Article 4, delay the application of these sub-paragraphs by not more than two years from the date of entry into force of this Agreement for such Party.

Article 3: Non-automatic Import Licensing

1. The following provisions, in addition to those in paragraphs 1 to 11 of Article 1 above, shall apply to non-automatic import licensing procedures. Non-automatic import licensing procedures are defined as import licensing not falling within the definition contained in Article 2.1 above.

2. Non-automatic licensing shall not have trade restrictive or distortive effects on imports additional to those caused by the imposition of the restriction. Non-automatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more administratively burdensome than absolutely necessary to administer the measure.

3. In the case of licensing requirements for purposes other than the implementation of quantitative restrictions, Parties shall publish sufficient information for other Parties and traders to know the basis for granting and/or allocating licenses.

4. Where a Party provides the possibility for persons, firms, or institutions to request exceptions or derogations from a licensing requirement, it shall include this fact in the information published under Article 1.4 as well as information on how to make such a request and, to the extent possible, an indication of the circumstances under which requests would be considered.

5. (a) Parties shall provide, upon the request of any Party having an interest in the trade in the product concerned, all relevant information concerning:

(i) the administration of the restrictions;
(ii) the import licences granted over a recent period;
(iii) the distribution of such licences among supplying countries;
(iv) where practicable, import statistics (i.e. value and/or volume) with respect to the products subject to import licensing. The developing countries would not be expected to take additional administrative or financial burdens on this account;

(b) Parties administering quotas by means of licensing shall publish the overall amount of quotas to be applied by quantity and/or value, the opening and closing dates of quotas, and any change thereof, within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

(c) In the case of quotas allocated among supplying countries, the Party applying the restrictions shall promptly inform all other Parties having an interest in supplying the product concerned of the shares in the quota currently allocated, by quantity or value, to the various supplying countries and shall publish this information within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

(d) Where situations arise which make it necessary to provide for an early opening date of quotas, the information referred to in Article 1.4 should be published within the time periods specified in Article 1.4 and in a manner as to enable governments and traders to become acquainted with them.

(e) Any person, firm or institution which fulfils the legal and administrative requirements of the importing Party shall be equally eligible to apply and to be considered for a licence. If the licence application is not approved, the applicant shall, on request, be given the reason therefor and shall have a right of appeal or review in accordance with the domestic legislation or procedures of the importing Party;

(f) The period for processing applications shall, except when not possible for reasons outside the control of the Party, not be longer than thirty days if applications are considered as and when received, i.e. on a first-come first-served basis, and no longer than sixty days if all applications are considered simultaneously. In the latter case the period for processing applications shall be considered to begin on the day following the closing date of the announced application period.

(g) The period of licence validity shall be of reasonable duration and not be so short as to preclude imports. The period of licence validity shall not preclude imports from distant sources, except in special cases where imports are necessary to meet unforeseen short-term requirements;

(h) When administering quotas, Parties shall not prevent importation from being effected in accordance with the issued licences, and shall not discourage the full utilization of quotas;

(i) When issuing licences, Parties shall take into account the desirability of issuing licences for products in economic quantities;

(j) In allocating licences, the Party should consider the import performance of the applicant. In this regard, consideration should be given as to whether licences issued to applicants in the past have been fully utilized during a recent representative period. In cases where licenses have not been fully utilized, the Party shall examine the reasons for this and take these reasons into consideration when allocating new licences. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities. In this regard, special consideration should be given to those importers importing products originating in developing countries and, in particular, the least-developed countries.

(k) In the case of quotas administered through licences which are not allocated among supplying countries, licence holders (footnote sometimes referred to as "quota holders"), shall be free to choose the sources of imports. In the case of quotas allocated among supplying countries, the licence shall clearly stipulate the country or countries.

(l) In applying paragraph 8 of Article 1 above, compensating adjustments may be made in future licence allocations where imports exceeded a previous licence level.

Article 4: Institutions

1. There shall be established under this Agreement a Committee on Import Licensing composed of representatives from each of the Parties (referred to in this Agreement as "the Committee"). The Committee shall elect its own Chairman and Vice Chairman and shall meet as necessary for the purpose of affording Parties the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives.

Article 5: Notification

1. Parties which institute licensing procedures or changes in these procedures shall notify the Committee of such within sixty days of publication.

2. Notifications of the institution of import licensing procedures shall include the following information:

(a) list of products subject to licensing procedures;
(b) contact point for information on eligibility;
(c) administrative body(ies) for submission of applications;
(d) date and name of publication where licensing procedures are published;
(e) indication of whether the licensing procedure is automatic or non-automatic according to definitions contained in Articles 2 and 3;
(f) in the case of automatic import licensing procedures, their administrative purpose;
(g) in the case of non-automatic import licensing procedures, indication of the measure being implemented through the licensing procedure; and
(h) expected duration of the licensing procedure if this can be estimated with some probability, and if not, reason why this information cannot be provided.

3. Notifications of changes in import licensing procedures shall indicate the elements mentioned above, if changes in such occur.

4. Parties shall notify the Committee of the publication(s) in which the information required in Article 14 will be published.

5. Any interested Party which considers that another Party has not notified the institution of a licensing procedure or changes therein in accordance with the provisions of paragraphs 1 to 3 above, may bring the matter to the attention of such other Party. If notification is not made promptly thereafter, such Party may itself notify the licensing procedure or changes therein, including all relevant and available information.

Article 6: Consultation and Dispute Settlement

1. Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement, shall be subject to the procedures of Articles XXII and XXIII of the GATT, and the Dispute Settlement Procedures as adopted by the CONTRACTING PARTIES.

Article 7: Review

1. The Committee shall review as necessary, but at least once every two years, the implementation and operation of this Agreement, taking into account the objectives thereof, and the rights and obligations contained therein.

2. As a basis for the Committee review, the secretariat shall prepare a factual report based on information provided under Article 5, responses to the annual questionnaire on import licensing procedures[1] and other relevant reliable information which is available to it. This report shall provide a synopsis of the aforementioned information, in particular indicating any changes or developments during the period of the review, and including any other information as agreed by the Committee.

3. Parties undertake to complete the annual questionnaire on import licensing procedures promptly and in full.

4. The Committee shall inform the CONTRACTING PARTIES to the GATT of developments during the period covered by such reviews.

Article 8: Final Provisions

1. Acceptance and accession

(a) This Agreement shall be open for acceptance by signature or otherwise, by governments' contracting parties to the GATT and by the European Economic Community;

(b) This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT, on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession;

(c) This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties, by the deposit with the Director-General to the CONTRACTING PARTIES to the GATT of an instrument of accession which states the terms so agreed;

(d) In regard to acceptance, the provisions of Article XXVI:5(a) and (b) of the General Agreement would be applicable.

2. Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

---

[1] Originally circulated as GATT document L/3515 of 23 March 1971.

3. Entry into Force

This Agreement shall enter into force on 1 January 1980 for the governments (footnote: For the purpose of this Agreement, the term "governments" is deemed to include the competent authorities of the European Economic Community) which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

4. National Legislation

(a) Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

(b) Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

5. Amendments

The Parties may amend this Agreement, having regard, inter alia, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

6. Withdrawal

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the day on which written notice of withdrawal is received by the Director-General to the CONTRACTING PARTIES to the GATT. Any Party may upon such notification request an immediate meeting of the Committee.

AGREEMENT (1990) ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE[1]

Commentary

The text requires a number of drafting changes. These, however, can be done once major political problems have been resolved. Without establishing an exhaustive list of these problems, it seems that they relate, mostly, to the level of disciplines on the use of domestic subsidies (through establishing quantitative thresholds above which a subsidy shall be deemed to result in serious prejudice) versus the green category under which some subsidies (e.g. those used to correct existing distortions at the regional level) would be non-actionable. Furthermore, the product coverage of the Agreement remains to be decided, taking into account work in other areas.

---

[1] Communications from the delegations of the European Communities, Pakistan, Mexico and Brazil are contained in MTN.TNC/W/36, W/37, W/38 and W/40 respectively.

AGREEMENT (1990) ON INTERPRETATION AND APPLICATION OF ARTICLES VI, XVI AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

PART I: GENERAL

Article 1

Definition of a subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a signatory (hereinafter referred to as "government"), i.e. where:

- (i) government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers or liabilities (e.g. loan guarantees);
- (ii) government revenue that is otherwise due, is foregone or not collected (e.g. fiscal incentives such as tax credits)[1];
- (iii) a government provides goods or services other than general infrastructure, or purchases goods or services;
- (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a)(2) there is any form of income or price support in the sense of Article XVI of the General Agreement;

and

(b) a benefit is thereby conferred.

---

[1] In accordance with the provisions of Article XVI of the General Agreement (Note to Article XVI), the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amount not in excess of those which have accrued, shall not be deemed to be a subsidy.

1.2 A subsidy as defined in paragraph 1 above shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V of this Agreement only if such a subsidy is specific in accordance with the provisions of Article 2 below.

Article 1a

Definition of "so-called new practices"

Article 2

Specificity

2.1 In order to determine whether a subsidy, as defined in Article 1.1 above is specific to an enterprise or industry or group of enterprises or industries (hereinafter referred to as "certain enterprises"), and as such confers a benefit on certain enterprises over those available to other enterprises or industries, the following shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy would be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions[1] governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law or regulation and be capable of verification.

(c) Where discretion is exercised in the course of the administration of a subsidy, specificity shall not exist if there is a clear indication, substantiated on the basis of positive evidence, that discretion has not been exercised so as to limit access to the subsidy to certain enterprises or to award amounts of subsidy so as to direct the subsidy to certain enterprises. In this regard, information on the frequency with which applications for the subsidy are refused and the reasons for such refusal shall, in particular, be considered.

---

[1] Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral and do not favour certain enterprises and which are economic in nature and horizontal in application; some examples might be levels of unemployment, average *per capita* income, number of employees, size of enterprise.

(d) A subsidy which is available to all enterprises located within a designated geographical region shall be specific irrespective of the nature of the granting authority. This provision shall not apply to regional subsidies non-actionable under Article 8 below.

2.2 Notwithstanding the provisions of sub-paragraphs (b) to (d) of paragraph 1 above, if the investigating authority determines that there is not sufficient evidence in certain cases to give adequate guidance for a finding of non-specificity, it may be necessary to look beyond any nominal non-specificity to determine whether the subsidy either is in fact obtainable predominantly by an industry or groups of industries, or accrues in disproportionately large amounts to an enterprise or group of enterprises within an industry, and thereby grants de facto a benefit to certain enterprises.

2.3 Any export subsidy shall be deemed to be specific.

2.4 Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

PART II: PROHIBITED SUBSIDIES

Article 3

Prohibition

3.1 Signatories agree that the following subsidies, within the meaning of Article 1 above, shall be considered as prohibited subsidies:

(a) subsidies contingent, in law or in fact[1] whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;[2]

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 Signatories shall not grant subsidies referred to in paragraph 1.

---

[1] This standard is met whenever the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in practice tied to actual or anticipated exportation or export earnings.

[2] Measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or any other provision of this Agreement.

Article 4

Remedies

4.1 Whenever a signatory has reason to believe that a prohibited subsidy is being granted or maintained by another signatory, such signatory may request consultation with such other signatory.

4.2 A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

4.3 Upon request for consultations under paragraph 1 above, the signatory believed to be granting or maintaining the subsidy in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

4.4 If no mutually acceptable solution has been reached within thirty days[1] of the request for consultations, any signatory party to such consultations may request that the matter be reviewed by the Committee on Subsidies and Countervailing Measures.[2]

4.5 Where a matter is referred to the Committee, the Committee shall immediately review the evidence with regard to the existence and nature of the subsidy in question and shall provide an opportunity for the other signatory to demonstrate that this measure is not a prohibited subsidy. The Committee may request the assistance of the Permanent Group of Experts[3] with regard to the determination of whether the measure in question is a prohibited subsidy. The Permanent Group of Experts shall immediately review the matter and report back to the Committee. The Group's conclusions shall be deemed to be adopted by the Committee unless the Committee disapproves.

4.6 If, as a result of its review, the Committee concludes that the subsidy in question is a prohibited subsidy, it shall recommend that the subsidizing signatory withdraw this subsidy without delay. The subsidizing signatory shall promptly comply with this recommendation. In the event the recommendation is not followed within such period as the Committee shall state in its recommendation, the Committee shall authorize such signatory affected by the subsidy in question to take appropriate countermeasures.

4.7 Any review of a matter referred to the Committee under paragraph 4 above shall be completed within 90 days of the request for such a review.

---

[1] Any time periods mentioned in this Article and in Articles 7 and 9 may be extended by mutual agreement.

[2] As established in Part VI of this Agreement and hereinafter referred to as "the Committee".

[3] To be established by the Committee pursuant to Article 24.

PART III: ACTIONABLE SUBSIDIES

Article 5

Trade effects

No signatory should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1 above, adverse effects to the interests of other signatories, i.e.:

(a) injury to the domestic industry of another signatory;[1]

(b) nullification or impairment of benefits accruing directly or indirectly to other signatories under the General Agreement, in particular the benefits of concessions bound under Article II of the General Agreement;

(c) serious prejudice to the interests of another signatory.[2]

Article 6

Serious prejudice

6.1 Serious prejudice in the sense of Article 5(c) shall be deemed to exist in the case of:

(a) the total *ad valorem* subsidization[3] of a product exceeding [5] per cent;

(b) subsidies to cover operating losses sustained by a specific industry;

(c) subsidies to cover operating losses sustained by an enterprise, other than one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;

---

[1] Injury to the domestic industry is used here in the same sense as it is used in Part V of this Agreement.

[2] Serious prejudice to the interests of another signatory is used in this Agreement in the same sense as it is used in Article XVI:1 of the General Agreement, and includes threat of serious prejudice.

[3] The total *ad valorem* subsidization shall be calculated in accordance with the provisions of Annex IV.

(d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment.

6.2 Notwithstanding the provisions of paragraph 1 above, serious prejudice shall not be found if the subsidizing signatory demonstrates that the subsidy in question has not resulted in any of the effects enumerated in paragraph 3 below.

6.3 Serious prejudice in the sense of Article 5(c) may arise in any case where one or several of the following apply:

(a) the effect of the subsidy is to displace or impede the imports of like product into the market of the subsidizing signatory;

(b) the effect of the subsidy is to displace or impede the exports of like product of another signatory from a third country market;

(c) the subsidy results in a significant price undercutting by the subsidized products as compared with the price of a like product of another signatory in the same market or the subsidized imports result in price suppression, price depression or lost sales in the same market;

(d) the subsidy results in an increase in the world market share of the subsidizing signatory in a particular subsidized product as compared to the share it had during the previous period of 3 years and this increase results from a consistent trend over a period when subsidies have been granted.

6.4 For the purpose of paragraph 3(a) above, displacing or impeding imports shall include any case in which it has been demonstrated to the Committee that a subsidy has been granted or significantly increased on a product which directly competes with the product on which a GATT concession as set out in the GATT schedule, or another GATT benefit has been granted.

6.5 For the purpose of paragraph 3(b) above, displacing or impeding exports shall include any case in which, subject to the provisions of paragraph 8 below, it has been demonstrated to the Committee that there has been a change in relative shares of the market to the disadvantage of the non-subsidized like product (over an appropriately representative period of, in normal circumstances, at least one year, sufficient to demonstrate clear trends in the development of the market for the product concerned). "Change in relative shares of the market" shall include any of the following situations: (i) there is an increase in the market share of the subsidized product; (ii) the market share of the subsidized product remains constant in circumstances in which, in the absence of the subsidy, it would have declined; (iii) the market share of the subsidized product declines, but at a slower rate than would have been the case in the absence of the subsidy.

6.6 For the purpose of paragraph 3(c) above, price undercutting should be demonstrated to the Committee through comparing prices of the subsidized product with prices of like non-subsidized products supplied to the same market. The comparison shall be made at the same level of trade and at comparable times. However, if such a direct comparison is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values.

6.7 Each signatory, in the market of which serious prejudice is alleged to have arisen, shall, subject to the provisions of paragraph 3 of Annex V, make available to the parties to a dispute and to the Committee all relevant information that can be obtained as to the changes in market shares of the disputing parties as well as concerning prices of the products involved.

6.8 Displacement or impedance resulting in serious prejudice shall not arise under paragraph 3 above where any of the following circumstances exist[1] during the relevant period:

(a) prohibition or restriction on exports of the like product from the complaining signatory or on imports from the complaining signatory into the third market concerned;

(b) decision by an importing government operating a monopoly of trade or state trading in the product concerned to shift, for non-commercial reasons, imports from the complaining signatory to another country or countries;

(c) natural disasters, strikes, transport disruptions or other force majeure substantially affecting production, qualities, quantities or prices of the product available for exports from the complaining signatory;

(d) existence of arrangements limiting exports from the complaining signatory;

(e) voluntary decrease in the availability for export of the product concerned from the complaining signatory (including, inter alia, a situation where firms in the complaining signatory have been autonomously reallocating exports of this product to new markets);

(f) failure to conform to standards and other regulatory requirements in the importing country.

6.9 In the absence of circumstances referred to in paragraph 8 above, the existence of serious prejudice should be determined on the basis of the information submitted in accordance with the provisions of Annex V.

---

[1] The fact that certain circumstances are referred to in this paragraph does not, in itself, confer upon them any legal status in terms of either the General Agreement or this Agreement.

Article 7

Remedies

7.1 Whenever a signatory has reason to believe that any subsidy, referred to in Article 1, granted or maintained by another signatory results in injury to its domestic industry, nullification or impairment or serious prejudice to its trade and production interests, such signatory may request consultations with such other signatory.

7.2 A request for consultations under paragraph 1 above shall include a statement of available evidence with regard to (a) the existence and the nature of the subsidy in question and (b) the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice[1] caused to the interests of the signatory requesting consultations.

7.3 Upon request for consultations under paragraph 1 above the signatory believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

7.4 If a mutually acceptable solution has not been reached within sixty days of the request for consultations, any signatory party to such consultations may refer the matter to the Committee.

7.5 The Committee shall, upon request, review the matter referred to it and shall present its conclusions within 120 days.

7.6 In any case in which it is determined by the Committee that any subsidy has resulted in adverse effects to the interests of another signatory within the meaning of Article 5 of this Agreement, the signatory granting or maintaining such a subsidy shall take appropriate steps to remove such adverse effects or shall withdraw the subsidy. If no such steps are taken within a period of [6] months, and in the absence of agreement on compensation, the Committee shall authorize the affected signatory to take countermeasures, commensurate with the degree and nature of adverse effects determined to exist.

---

[1] In the event that the request relates to a subsidy deemed to result in serious prejudice in terms of Article 6.1 above, the available evidence of serious prejudice may be limited to the available evidence as to whether the conditions of Article 6.1 have been met or not.

PART IV: NON-ACTIONABLE SUBSIDIES

Article 8

Identification of non-actionable subsidies

8.1 Signatories agree that the following shall be considered as non-actionable:

(a) subsidies which are, within the meaning of Article 2 above, de jure generally available and which are not deemed to be specific in fact;

(b) subsidies which are specific within the meaning of Article 2 above but which meet all of the conditions provided for in paragraphs 2 and 3 below.

8.2 Notwithstanding other provisions of this Agreement, a subsidy may be non-actionable if it is one of the following:

(a) assistance for research and development conducted by firms or by higher education or research establishments on a contract basis with firms if either:

(1) the results may be used without fee or restriction and are promptly made available to the public including through reports at not more than half-yearly intervals during the course of the research; or

(2) the assistance covers not more than [20] per cent of the costs of basic industrial research[1] or [10] per cent of the costs of applied research and development[2];

and provided that such assistance is limited exclusively to:

(i) personnel costs (researchers, technicians and other supporting staff employed exclusively in the research and development activity);

---

[1] The term "basic industrial research" means original theoretical and experimental work whose objective is to achieve new or better understanding of the laws of science and engineering.

[2] The term "applied research and development" means activity taking place prior to the industrial or commercial exploitation of a product.

(ii) costs of instruments, equipment, land and buildings used exclusively for the research and development activity;

(iii) consultancy and equivalent services used exclusively for the research and development activity, including bought-in research, technical knowledge, patents, etc.;

(iv) additional overhead costs incurred directly as a result of the research and development activity.

(b) structural adjustment assistance to reduce capacity provided that such assistance:

(i) is conditioned on the permanent and irreversible closing or reduction of capacity of a producer,

(ii) is given to a producer that has been engaged in production, the capacity of which is being reduced, during the four consecutive years preceding the assistance,

(iii) is given for a limited period of time up to a maximum of [five] years,

(iv) does not result, in the case of permanent closing, in the use of the producer's plant or equipment for subsequent same production by any entity within the subsidizing signatory, and

(v) is limited to [X] per cent of the minimum costs necessary for orderly closing or reduction of capacity such as the costs for sustaining employment.

(c) assistance to promote:

(1) adaptation of existing facilities[1] to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a one-time, non-recurring measure; and

(ii) is limited to [20] per cent of the cost of adaptation; and

---

[1] The term "existing facilities" means facilities having been in operation for at least two years at the time when new environmental requirements are imposed.

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms;

(iv) is directly linked to and proportional to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved;

(v) is available to all firms which can adopt the new equipment and/or production processes.

(2) adoption of new equipment and/or production processes which will avoid, reduce or eliminate nuisances and pollution even further than existing environmental requirements imposed by law and/or regulations, provided that such assistance is granted for the purpose of carrying out research and development activity with a view to evolving new products or production techniques which pollute less, or provided that such assistance:

(i) is granted for dissemination of production techniques which pollute less (i.e. to encourage firms to prefer such techniques); and

(ii) respects the conditions listed under (1) above.

(d) assistance to disadvantaged regions within the territory of a signatory given pursuant to a general framework of regional development and generally available within eligible regions provided that:

(i) disadvantaged region includes but is not necessarily limited to at least one clearly designated geographical region with definable economic and political identity,

(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria, clearly spelled out in law or regulation and capable of verification,

(iii) the criteria shall include a composite measurement of economic development which is at least [15] per cent below the national standard, and may include other factors such as gross migration rate;

(iv) the composite measurement of economic development must comprise the two following indicators:

- one of either income per capita or household income per capita,
- the inverse of the unemployment rate

(v) each of the indicators in (iv) above must be expressed as a percentage of the national average and be given equal weight in the composite measurement of economic development.

8.3 A subsidy granted pursuant to the provisions of paragraph 2 above shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII of this Agreement. Any such notification shall be sufficiently specific to enable other signatories to evaluate the consistency of the subsidy with the conditions and criteria provided for in the relevant provisions of paragraph 2 above.

8.4 The Committee shall, upon request, promptly review any of the subsidies notified under the provisions of paragraph 3 above, with a view to determining whether the conditions and criteria laid down in paragraph 2 above have not been met.

8.5 If certain enterprises benefit from several programmes referred to in paragraph 2 above, only [one] such programme[s] may be considered as non-actionable.

Article 9

Special 'safeguard' procedures

9.1 If, in the course of implementation of a programme referred to in Article 8.1(b) above, a signatory has reasons to believe that this programme has resulted in serious and long-lasting adverse effects to its trade or production interests, such signatory may request consultations with such other signatory.

9.2 A request for consultations under paragraph 1 above shall include (a) a statement of evidence with regard to the injury caused by the non-actionable subsidy to the domestic industry or serious prejudice to the interests of the signatory requesting consultations and (b) an explanation as to why the adverse effects are of a serious and long-lasting nature. Such adverse effects shall be demonstrated by positive evidence, through an economic examination of the impact on trade or production of the requesting signatory.

9.3 Upon request for consultations under paragraph 1 above, the signatory maintaining the subsidy programme in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

9.4 If, as a result of consultations, no mutually acceptable solution has been reached within 60 days of the request for consultations, the requesting signatory may refer the matter to the Committee.

9.5 Where a matter is referred to the Committee, the Committee shall immediately review the facts involved and the evidence of serious and long-lasting adverse effects. If the Committee determines that the non-actionable subsidy has resulted in serious and long-lasting adverse effects, it may recommend to the subsidizing signatory to modify this programme in such a way as to remove those effects. In the event the recommendation is not followed, the Committee shall authorize the requesting signatory to take appropriate countermeasures commensurate with the nature and degree of the long-lasting adverse effects determined to exist. The Committee shall not authorize countermeasures which would clearly go beyond what is necessary to offset such adverse effects. The decision shall be taken not later than 120 days after the matter has been referred to the Committee.

PART V: COUNTERVAILING MEASURES

Article 10

Application of Article VI of the General Agreement[1]

Signatories shall take all necessary steps to ensure that the imposition of a countervailing duty[2] on any product of the territory of any signatory imported into the territory of another signatory is in accordance with the provisions of Article VI of the General Agreement and the terms of this Agreement.

Article 11

Initiation and subsequent investigation

11.1 Countervailing duties may only be imposed pursuant to investigations initiated[3] and conducted in accordance with the provisions of this Agreement. An investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request by or on behalf of the industry[4] affected. The request shall include sufficient evidence of the existence of (a) a subsidy and, if possible, its amount, (b) injury within the meaning of Article VI of the General

---

[1] The provisions of Parts II or III may be invoked in parallel with the provisions of Part V of this Agreement; however, with regard to the effects of a particular subsidy in the domestic market of the importing country, only one form of relief (either a countervailing duty, if other requirements of Part V are met, or a countermeasure under Articles 4 or 7 of this Agreement) shall be available. The provisions of Parts III and V may not be invoked regarding measures considered non-actionable in accordance with the provisions of Part IV of this Agreement. However, measures referred to in Article 8.1(a) above may be investigated in order to determine whether they are generally available within the meaning of Article 2 above.

[2] The term 'countervailing duty' shall be understood to mean a special duty levied for the purpose of off-setting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in Article VI:3 of the General Agreement.

[3] The term 'initiated' as used hereinafter means procedural action by which a signatory formally commences an investigation as provided in paragraph 4 of this Article.

[4] As defined in Article 16

Agreement as interpreted by this Agreement[1], and (c) a causal link between the subsidized imports and the alleged injury. Before initiating an investigation, the authorities concerned shall satisfy themselves on the basis of positive evidence that the request is supported by the domestic industry. If in special circumstances the authorities concerned decide to initiate an investigation without having received such a request, they shall proceed only if they have sufficient evidence on all points under (a) through (c) above.

11.2 A request within the meaning of paragraph 1 shall in particular contain such evidence which can reasonably be expected to be available to the complainant on the following: (a) identity of the complainant and of the domestic industry on whose behalf the complaint is lodged, (b) evidence that the request is supported by the domestic industry, (c) evidence with regard to the existence, amount and nature of the subsidy in question, (d) volume and prices of the allegedly subsidized imports and their effect on the affected domestic industry, as demonstrated by developments in production, capacity utilization, sales, sales prices, stocks, consumption, market shares, profits or losses, and employment, and (e) evidence that any alleged material injury to a domestic industry is caused by subsidized imports, through the effects of subsidies, and not by other factors.

11.3 Each signatory shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in this Article and (b) its domestic procedures governing the initiation and conduct of such investigations.

11.4 The competent authorities shall review the adequacy of the evidence provided in the request for the initiation of an investigation in light of any relevant and readily available information and determine whether the evidence is sufficient to justify the opening of an investigation.

11.5 Upon initiation of an investigation and thereafter, the evidence referred to in paragraph 1(a)-(c) above should be considered simultaneously. In any event the evidence of points (a) through (c) shall be considered simultaneously (a) in the decision whether or not to initiate an investigation and (b) thereafter during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

11.6 In cases where products are not imported directly from the country of origin but are exported to the country of importation from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the country of importation.

---

[1] Under this Agreement the term 'injury' shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of Article 15.

11.7 An application shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There should be immediate termination in cases where the amount of a subsidy or the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be negligible if the subsidy is less than [X] per cent *ad valorem*. The volume of the subsidized imports shall be considered negligible if this volume represents less than [X] per cent of the domestic market for the like product in the importing country, unless imports from countries whose individual market shares represent less than [X] per cent collectively account for more than [X] per cent of the domestic market for the like product in the importing country.

11.8 An investigation shall not hinder the procedure of customs clearance.

11.9 Investigations shall, except in special circumstances, be concluded within one year after their initiation.

Article 12

Evidence

12.1 Interested signatories and interested parties[1,2] shall be given ample opportunity to present in writing all information and argument that they consider relevant in respect of the investigation in question. Taking account of the need to protect confidential information, written information and argument submitted by one interested signatory or interested party shall be made available promptly to other interested signatories or interested parties participating in the investigation. Interested signatories and interested parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested parties subsequently shall be required to reduce such submissions to writing. Any decision of the investigating authorities can only be based on such information and arguments as were on the written record of this authority and which were available to interested signatories and interested parties participating in the investigation, due account having been given to the need to protect confidential information.

---

[1] For the purpose of this Agreement "party" means any natural or juridical person resident in the territory of any signatory.

[2] Any "interested signatory" or "interested party" shall refer to a signatory or a party economically affected by the subsidy in question.

12.2 Respondents to a countervailing duty questionnaire shall be given at least thirty days for reply. As a general rule, the time-limit for exporters should be counted from the date of receipt of the questionnaire which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting country. Due consideration should be given to any request for an extension of the thirty day period and, upon course shown, such an extension should be granted whenever possible.

12.3 Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by parties to an investigation shall upon good cause shown, be treated as such by the investigating authorities. Such information shall not be disclosed without specific permission of the party submitting it.[1] Investigating authorities shall either require persons providing confidential information to furnish non-confidential summaries thereof or shall prepare such summaries. Those summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In the event such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible must be provided.

12.4 However, if the investigating authorities find that a request for confidentiality is not warranted and if the supplier of the information is unwilling to make the information public, the authorities may disregard such information.[2]

12.5 The investigating authorities may carry out investigations in the territory of other signatories as required, provided that they have notified in good time the signatory in question and unless the latter objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if (a) the firm so agrees and (b) the signatory in question is notified and does not object. The procedures set forth in Annex VI to this Agreement shall apply to investigations on the premises of a firm.

---

[1] Signatories are aware that in the territory of certain signatories disclosure pursuant to a narrowly-drawn protective order may be required.

[2] Signatories agree that requests for confidentiality should not be arbitrarily rejected. Signatories further agree that the investigating authority may request the waiving of confidentiality only regarding information relevant to the proceedings.

12.6 In cases in which any interested party or signatory refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations[1], affirmative or negative, may be made on the basis of the facts available.

12.7 Before final determinations are made, investigating authorities shall inform all interested parties of the essential facts and considerations on the basis of which it is intended to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

12.8 The procedures set out above are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 13

Consultations

13.1 As soon as possible after a request for initiation of an investigation is accepted, and in any event before the initiation of any investigation, signatories the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in Article 11:1 above and arriving at a mutually agreed solution.

13.2 Furthermore, throughout the period of investigation, signatories the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.[2]

---

[1] Because of different terms used under different systems in various countries the term 'determination' is hereinafter used to mean a formal decision or finding.

[2] It is particularly important, in accordance with the provisions of this paragraph, that no affirmative determination whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Parts I and II of this Agreement.

13.3 Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a signatory from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

13.4 The signatory which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the signatory or signatories the products of which are subject to such investigation access to non-confidential evidence including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 14

Calculation of the amount of a subsidy

For the purpose of Part V of this Agreement, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to Article 1.1 above has to be provided for in the national legislation or implementing regulations of the signatory concerned and its application to each particular case has to be transparent and adequately explained. Furthermore any such method shall be consistent with the following guidelines:

(a) Government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that signatory.

(b) A loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and a comparable commercial loan which the firm could obtain on the market. In this case the benefit shall be the difference between these two amounts.

(c) A loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts.

(d) The provision or purchase of goods or services by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

(e) When the government is the sole provider or purchaser of the good or service in question, the provision or purchase of such good or service shall not be considered as conferring a benefit, unless the government discriminates among users or providers of the good or service. Discrimination shall not include differences in treatment between users or providers of such goods or services due to normal commercial considerations.

Article 15

Determination of injury

15.1 A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective examination of both (a) the volume of subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products[1] and (b) the consequent impact of these imports on the domestic industry concerned.

15.2 With regard to the volume of subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing signatory. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether there has been significant price undercutting by the subsidized imports as compared with prices of the like domestic product, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, that otherwise would have occurred to a significant degree. No one or several of these factors can necessarily give decisive guidance.

15.3 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authorities may cumulatively assess effects of such imports only if they determine that (1) the amount of subsidization established in relation to the imports from each country is more than de minimis and that the volume of imports from each country is not negligible as defined in Article 11.7 and (2) that a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product.

---

[1] Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product which although not alike in all respects, has (a) physical, technical and/or chemical characteristics and (b) applications or uses closely resembling those of the product under consideration.

15.4 The examination of the impact on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment and, in the case of agriculture, whether there has been an increased burden on Government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

15.5 It must be demonstrated that the subsidized imports are, through the effects[1] of subsidies, causing injury within the meaning of this Agreement. The authorities shall consider whether there are other factors[2] which at the same time are injuring the domestic industry and the injuries caused by other factors must not be attributed to the subsidized imports. Determinations of injury shall contain explanations of how the authorities have considered such other factors.

15.6 A determination of threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding threat of material injury, the investigating authorities should consider, inter alia, such factors as: nature of subsidy in question and the trade effects likely to rise therefrom; a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importations thereof; sufficient freely disposable capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing country's market taking into account the availability of other export markets to absorb any additional exports; whether exports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further exports; and inventories in the importing country of the product being investigated. It is understood that no one of these factors by itself can necessarily give decisive guidance but that the totality of factors considered must lead to the conclusion that further subsidized imports are imminent and that unless protective action is taken, material injury would occur.

---

[1] As set forth in paragraphs 2 and 4 of this Article.

[2] Such factors can include inter alia, the volume and prices of non-subsidized imports of the product in question, contraction in demand or changes in the pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

15.7 The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of production in terms of such criteria as: the production process, the producers' realization, profits. When the domestic production of the like product has no separate identity in these terms the effects of subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Article 16

Domestic industry

16.1 For the purposes of this Agreement, the term "domestic industry" shall, except as provided in paragraph 2 below, be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related[1] to the exporters or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, "domestic industry" may be interpreted as referring to the rest of the producers. The term "major proportion" shall be interpreted as meaning at least [x] per cent by value of the total domestic production of the like product.

16.2 In exceptional circumstances the territory of a signatory may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

---

[1] For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

16.3 When the industry has been interpreted as referring to the producers in a certain area, as defined in paragraph 2 above, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing signatory does not permit the levying of countervailing duties on such a basis, the importing signatory may levy the countervailing duties without limitation, only if (a) the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurances pursuant to Article 19 of this Agreement, and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.

16.4 Where two or more countries have reached under the provisions of Article XXIV:8(a) of the General Agreement such a level of integration that they have the characteristics of a single, unified market the industry in the entire area of integration shall be taken to be the industry referred to in paragraphs 1 and 2 above.

Article 17

Imposition of countervailing duties

17.1 The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less are decisions to be made by the authorities of the importing signatory. It is desirable that the imposition should be permissive in the territory of all signatories, that the duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove injury to the domestic industry, and that procedures should be established which would allow the authorities concerned to take due account of representations made by domestic interested parties[1] whose interests might be adversely affected by the imposition of a countervailing duty.

---

[1] For the purpose of this paragraph, the term "domestic interested parties" shall include consumers and industrial users of the imported product subject to investigation.

17.2 No countervailing duty shall be levied[1] on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

17.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and to be causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to co-operate, shall be entitled to an expedited investigation in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter or exempt the exporter from the application of such duty. Any such expedited investigation shall be concluded within [X] months after the date on which a request for such investigation was made.

17.4 If, after reasonable efforts have been made to complete consultations, a signatory makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury, it may impose a countervailing duty in accordance with the provisions of this section unless the subsidy is withdrawn.

Article 18

Provisional measures and retroactivity

18.1 Provisional measures shall not be applied unless a formal investigation has been initiated and a notice published to that effect and interested signatories and interested parties have been given adequate opportunities to submit information and make comments. Provisional measures may be taken only after a preliminary affirmative determination has been made that a subsidy exists and that there is material injury or threat thereof, to a domestic industry caused by subsidized imports. Provisional measures shall not be applied unless the authorities concerned judge that they are necessary to prevent injury being caused during the period of investigation. Provisional measures shall normally not be applied sooner than [X] days from the date of the initiation of the investigation.

---

[1] As used in this Agreement 'levy' shall mean the definitive or final legal assessment or collection of a duty or tax. This definition is without prejudice to the meaning of the term 'levy' in Article VI of the General Agreement.

18.2 Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

18.3 The imposition of provisional measures shall be limited to as short a period as possible, not exceeding four months.

18.4 The relevant provisions of Article 17 shall be followed in the imposition of provisional measures.

18.5 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or in the case of a final determination of threat of injury where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

18.6 If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

18.7 Except as provided in paragraph 5 above, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

18.8 Where a final determination is negative any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

18.9 In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of the General Agreement and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than ninety days prior to the date of application of provisional measures.

Article 19

Undertakings

19.1 (a) Proceedings may[1] be suspended or terminated without the imposition of provisional measures or countervailing duties, if undertakings are accepted under which:

(i) the government of the exporting country agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(ii) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under undertakings shall not be higher than necessary to eliminate the amount of the subsidy. Price undertakings shall not be sought or accepted from exporters unless the importing signatory has first (1) initiated an investigation in accordance with the provisions of Article 11 of this Agreement, (2) made preliminary determinations of subsidy and injury resulting therefrom based on sufficient evidence resulting from such an investigation and (3) obtained the consent of the exporting signatory. Undertakings offered need not be accepted if the authorities of the importing signatory consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons.

(b) If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the exporting signatory so desires or the importing signatory so decides. In such a case, if a determination of no injury or threat thereof is made, the undertaking shall automatically lapse, except in cases where a determination of no threat of injury is due in large part to the existence of an undertaking; in such cases the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement.

(c) Price undertakings may be suggested by the authorities of the importing signatory, but no exporter shall be forced to enter into such an undertaking. The fact that governments or exporters do not offer such undertakings or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

---

[1] The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings, except as provided in paragraph (b) of this Article.

19.2 Authorities of an importing signatory may require any government or exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. In case of violation of undertakings, the authorities of the importing signatory may take expeditious actions under this Agreement in conformity with its provisions which may constitute immediate application of provisional measures using the best information available. In such cases definitive duties may be levied in accordance with this Agreement on goods entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

19.3 Undertakings shall not remain in force any longer than countervailing duties could remain in force under this Agreement. The authorities of an importing signatory shall review the need for the continuation of any undertaking, where warranted, on their own initiative, or if interested exporters or importers of the product in question so request and submit positive information substantiating the need for such review.

Article 20

Duration of countervailing duties

20.1 A countervailing duty shall remain in force only as long as, and to the extent necessary to counteract the subsidization which is causing injury. The investigating authorities shall review the need for continued imposition of the duty, where warranted, on their own initiative or if any interested party so requests and submits positive information substantiating the need for review.

20.2 Notwithstanding the provisions of paragraph 1 above, every countervailing duty shall be terminated within 5 years of its imposition unless the investigating authorities determine on the basis of a review that there is 'good cause' for the continuation of the duty, after all interested parties have had a full opportunity to present their views.

Article 21

Measures to prevent circumvention

21.1 Where, following the entry into force of a countervailing duty imposed in accordance with this Agreement:

(i) parts and components are shipped from the country covered by the countervailing duty finding to the importing country for assembly or completion into a product covered by the countervailing duty finding, and the value of the parts and components imported from the country subject to the countervailing duty finding is equal to or exceeds [X] per cent of the total value of the assembled or finished product; or

(ii) parts and components are shipped from the country covered by the countervailing duty finding to a third country for assembly or completion into the product covered by the countervailing duty finding, which is then exported to the importing country, and the value of the parts and components imported from the country subject to the countervailing duty finding is equal to or exceeds [X] per cent of the total value of the assembled or finished product;

Signatories may apply the measures specified in paragraphs 4 and 5 below, subject to the conditions set forth in paragraphs 2 and 3 of this Article.

21.2 In the case referred to in subparagraph 1(i) above investigating authorities should satisfy themselves that: (i) imports of the parts or components have increased since the issuance of the countervailing duty measure; (ii) the exporter of the parts or components, the producer covered by the countervailing duty measure, and the assembler in the importing country are related parties; (iii) the most significant parts or components are being shipped to the importing country for assembly or completion, and (iv) the assembly or completion process was started or substantially expanded since the issuance of the countervailing duty measure.

21.3 In the case referred to in subparagraph 1(ii) above investigating authorities should satisfy themselves that: (i) shipments of the parts or components to the third country have increased since the issuance of the countervailing duty measure; (ii) exports to the importing country of the merchandise assembled or completed in the third country have increased since the issuance of the countervailing duty measure; (iii) the exporter of the parts or components, the producer covered by the countervailing duty measure, and the assembler or finisher in the third country are related parties; (iv) the most significant parts or components are being shipped to the third country for assembly or completion, and (v) the assembly or completion process was started or substantially expanded since the issuance of the countervailing duty measure.

21.4 In a situation as described in subparagraph 1(i) above the authorities concerned may, if the conditions set forth in paragraph 2 are fulfilled ...

21.5 In a situation as described in subparagraph 1(ii) above, the authorities concerned may, if the conditions set forth in paragraph 3 are fulfilled...

21.6 For the purpose of calculation of the rate and amount of duties which may be applied pursuant to paragraphs 4 and 5, the following rules shall apply ...

21.7 For the purpose of this Article the term 'related parties' shall be interpreted to mean ...

21.8 Measures authorized under this Article shall be taken only if the authorities concerned have carried out formal investigations. The provisions of this Agreement concerning initiation of investigations, rights of interested parties and public notice shall apply mutatis mutandis to investigations carried out under this Article.

Article 22

Public Notice and Explanation of Countervailing Duty Determinations

22.1 When the investigating authorities are satisfied that there is sufficient evidence to justify initiating an investigation, the signatory or signatories, the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein and the complainants shall be notified and a public notice shall be given.

22.2 Investigating authorities shall provide the full text of the complaint to the exporters[1] and to the authorities of the exporting country and make it available, upon request, to the importers and other interested parties involved as soon as a decision has been made to open an investigation, due regard being paid to the requirement for the protection of confidential information. In cases where confidential information is provided in the complaint, investigating authorities shall require a non-confidential summary of such information in the non-confidential copy. The possibility of not providing a summary of confidential information shall be confined to extremely exceptional cases and in such cases the parties providing confidential information shall fully explain the reasons therefor. Investigating authorities shall avoid, unless a decision has been made to open an investigation, any publicizing of the complaint or its release.

---

[1] It being understood that where there are numerous exporters, the full text of the complaint should instead be provided only to the authorities of the exporting country or to the relevant trade association who then should forward copies to the exporters concerned.

22.3 A public notice of the initiation of an investigation shall contain adequate information on the following: (i) the name of the exporting country and the product involved, (ii) the date of initiation of the investigation, (iii) a description of the subsidy practice or practices to be investigated, (iv) a summary of the factors on which the allegation of injury is based, (v) the address to which representations by interested parties should be directed and (vi) the time-limits allowed to interested parties for making their views known.

22.4 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 19, of the termination of such an undertaking, and of the revocation of a determination. Each such notice shall set forth the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities in sufficient detail. All such notices shall be forwarded to the signatory or signatories the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

22.5 A public notice of the imposition of provisional measures shall set forth adequate reasons for the preliminary determinations on the existence of a subsidy and injury (insofar as there is no separate preliminary injury determination and a notice thereof) and shall refer to the matters of fact and law which have led to arguments being accepted or rejected, due regarding being paid to the requirement for the protection of confidential information, and in particular: (1) the names of the suppliers or when this is impracticable, the supplying countries involved; (ii) a description of the product which is sufficient for customs purposes; (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined; (iv) factors which have led to the injury determination including factors other than subsidized imports which have been taken into account when the injury determination is made, insofar as there is no separate notice concerning such injury determination and including such information; (v) the main reasons leading to the determination.

22.6 A notice of suspension or conclusion of an investigation in the case of an affirmative determination involving the imposition of a definitive duty or the acceptance of an undertaking shall contain all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or to the acceptance of an undertaking, due regard being paid to the requirement for the protection of confidential information, and in particular: (i) the names of the suppliers or when this is impracticable, the supplying countries involved; (ii) a description of the product, which is sufficient for customs purposes; (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined; (iv) factors which have led to the injury determination including information on factors other than dumping which have been taken into account when the injury determination is made, insofar as there is no separate notice concerning such injury determination and including such information; (v) the main reasons leading to the determination, (vi) the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers.

22.7 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 19 shall include the non-confidential part of the undertaking.

22.8 The provisions of this Article concerning publication and notification of interested parties shall apply mutatis mutandis to the initiation and completion of administrative reviews pursuant to Article 20 and to decisions under Article 18 to apply duties retroactively.

Article 23

Judicial Review

Each signatory shall maintain juridical, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative action relating to initiation and final determinations and reviews of determinations within the meaning of Articles 11, 17 and 20 of this Agreement. Such tribunals or procedures shall be independent of the authority responsible for the determination or review in question, and shall provide all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative action with access to review.

PART VI

Article 24

Committee on Subsidies and Countervailing Measures and other subsidiary bodies

24.1 There shall be established under this Agreement a Committee on Subsidies and Countervailing Measures composed of representatives from each of the signatories to this Agreement. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any signatory. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the signatories and it shall afford signatories the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The GATT secretariat shall act as the secretariat to the Committee.

24.2 The Committee may set up subsidiary bodies as appropriate.

24.3 The Committee shall establish a Permanent Group of Experts composed of five independent persons, highly qualified in the fields of subsidies and trade relations. The experts will be elected by the Committee and one of them will rotate every year. The Committee may request the Group of Experts to prepare a proposed ruling on the existence of a prohibited subsidy, as provided for in Article 4.5 above. The Committee may also seek an advisory opinion on the existence and nature of any subsidy.

24.4 The Group of Experts may be consulted by any signatory and give advisory opinions on the nature of any subsidy proposed to be introduced or currently maintained by that signatory. Such advisory opinions will be confidential and may not be invoked in proceedings under Article 7 of this Agreement.

24.5 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a signatory, it shall inform the signatory involved.

PART VII

NOTIFICATION AND SURVEILLANCE

Article 25

Notifications

25.1 Signatories agree that, without prejudice to the provision of Article XVI:1 of the General Agreement, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 through 6 below.

25.2 Signatories shall notify any subsidy as defined in paragraphs 1 and 2 of Article 1 above, granted or maintained within their territory.

25.3 The content of notifications should be sufficiently specific to enable other signatories to evaluate the trade effects and to understand the operation of notified subsidies programmes. In this connection and without prejudice to the contents and form of the questionnaire on subsidies[1,*], signatories shall ensure that their notifications contain the following information:

(i) form of a subsidy (i.e. grant, loan, tax concession, etc.);

(ii) subsidy per unit or, in cases where it is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);

(iii) policy objective and/or purpose of a subsidy;

(iv) duration of a subsidy and/or any other time-limits attached to it;

(v) statistical data permitting an assessment of the trade effects of a subsidy.

25.4 Where specific points in paragraph 3 above have not been addressed in a notification, an explanation shall be provided in the notification itself.

25.5 If subsidies are granted to specific products or sectors, the notifications should be organized by product or sectors.

---

[1] BISD, 9S/193-194 and BISD, 11S/58.

[*] The Group may wish to address the contents and form of the questionnaire.

25.6 Signatories which consider that there are not measures or schemes in their countries requiring notification under Article XVI:1 shall so inform the GATT secretariat in writing.

25.7 Signatories recognize that notification of a measure does not prejudge either its legal status under the General Agreement and this Agreement, the effects under this Agreement, or the nature of the measure itself.

25.8 Any signatory may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another signatory (including any subsidy referred to in Part IV above), or for explanation of the reasons for which a specific measure has been considered as not notifiable.

25.9 Signatories so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting signatory. In particular they shall provide sufficient details to enable the other signatory to assess their compliance with the terms of this Agreement. Any signatory which considers that such information has not been provided may bring the matter to the attention of the Committee.

25.10 Any interested signatory which considers that any practice of another signatory having the effects of a subsidy has not been notified in accordance with the provisions of Article XVI:1 of the General Agreement and this Article may bring the matter to the attention of such other signatory. If the alleged subsidy is not thereafter notified promptly, such signatory may itself bring the alleged subsidy in question to the notice of the Committee.

25.11 Signatories shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports will be available in the GATT secretariat for inspection by government representatives. The signatories shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months.

Article 26

Surveillance

26.1 The Committee shall examine new and full notifications submitted under Article XVI:1 of the General Agreement and Article 25:1 of this Agreement at special sessions held every third year. Notifications submitted in the intervening years (updating notifications) shall be examined at each regular meeting of the Committee.

26.2 The Committee shall examine reports submitted under Article 25.11 above at each regular meeting of the Committee. The semi-annual reports shall be submitted on an agreed standard form.

PART VIII: DEVELOPING COUNTRIES

Article 27

Special and differential treatment for developing countries

27.1 Signatories recognize that subsidies may play an important rôle in economic development programmes of developing countries.

27.2 Accordingly, this Agreement shall not prevent developing country signatories from adopting measures and policies to assist their industries, including those in the export sector. In particular, the commitment of Article 3.1(a) shall not apply to developing country signatories referred to in:

(a) Annex VII;

(b) Annex VIII, which have undertaken not to grant export subsidies in a manner which results in the overall level of export subsidies granted or bestowed on any product exceeding the level set forth in that Annex/calculated on a per unit basis/.

27.3 Provisions of Article 4 shall not apply to developing country signatories in the case of export subsidies which are in conformity with the terms set forth in Annex VIII. The relevant provisions in such a case shall be those of Article 7.

27.4 There shall be no presumption that a subsidy not inconsistent with this and other Articles of this Agreement (including those referred to in Article 6.1) granted by developing country signatories results in serious prejudice, as defined in this Agreement, to the trade or production of another signatory. Such serious prejudice, where applicable under the terms of paragraph 5 below, shall be demonstrated by positive evidence, in accordance with the provisions of Article 6.2 through 6.9.

27.5 With respect to any actionable subsidy, other than those referred to in Article 6.1, granted by a developing country signatory, action may not be authorized or taken under Article 7 of this Agreement, unless nullification or impairment of tariff concessions or other obligations under the General Agreement is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of like products into the market of the subsidizing country or unless injury to domestic industry in the importing market of a signatory occurs in terms of Article 15 of this Agreement.

27.6 No countervailing duty action shall be taken against any product originating in signatories referred to in Annex VII and VIII if:

(a) the overall level of subsidies granted or bestowed upon the product in question does not exceed [X] per cent of its value/calculated on a per unit basis/;

(b) the volume of the subsidized imports represents less than [X] per cent of the domestic market for the like product in the importing signatory, unless imports from countries whose individual market shares represent less than [X] per cent collectively account for more than [X] per cent of the domestic market for the like product in the importing country.

27.7 The Committee shall, upon request by an interested signatory, undertake a review of a specific export subsidy practice of a developing country signatory to examine the extent to which the practice is in conformity with the terms set forth in Annex VIII.

27.8 The Committee shall, upon request by an interested developing country signatory, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraph 6 above.

PART IX: TRANSITIONAL ARRANGEMENTS

Article 28

Existing programmes

Subsidy programmes that have been established by any signatory before 1 November 1990 and which are inconsistent with the provisions of this Agreement shall be:

(i) notified to the Committee by 1 January 1991 or the earliest practicable date thereafter;

(ii) brought into conformity with the provisions of this Agreement within [5] years of the date of entry into force of this Agreement for such signatory.

No signatory shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiration at a date earlier than 1 January 199..

Article 29

Transformation into a market economy

Without prejudice to other specific arrangements under the General Agreement, signatories in the process of transformation from a state-trading system into a market, free enterprise economy may be granted, by the Committee time-limited waivers[1] for programmes inconsistent with other provisions of this Agreement but necessary for such a transformation.

PART X: DISPUTE SETTLEMENT

Without prejudice to the provisions of Articles 4, 7 and 9 above, the provisions governing the settlement of disputes under the General Agreement shall apply, *mutatis mutandis*, to the settlement of disputes under this Agreement.

PART XI: FINAL PROVISIONS

---

[1] Under such a waiver an actionable programme may become non-actionable for an agreed period.

ANNEX I

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available[1] on world markets to their exporters.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes[2] or social welfare charges paid or payable by industrial or commercial enterprises.[3]

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes[2] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior stage cumulative indirect taxes[2] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on goods that are physically incorporated (making normal allowance for waste) in the exported product.[4] This item shall be interpreted in accordance with the guidelines on physical incorporation contained in Annex II.

(i) The remission or drawback of import charges[2] in excess of those levied on imported goods that are physically incorporated (making normal allowance for waste) in the exported product; provided, however, that in particular cases a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on physical incorporation contained in Annex 2 and the guidelines in the determination of substitution drawback systems as export subsidies, contained in Annex III.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a signatory is a party to an international undertaking on official export credits to which at least twelve original signatories to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original signatories), or if in practice a signatory applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the General Agreement.

NOTES

[1] The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

[2] For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

"Remission" of taxes includes the refund or rebate of taxes.

"Remission or drawback" includes the full or partial exemption or deferral of import charges.

[3] The signatories recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The signatories reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any signatory may draw the attention of another signatory to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the signatories shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of signatories under the General Agreement, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a signatory from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another signatory.

[4] Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

ANNEX II

GUIDELINES ON PHYSICAL INCORPORATION

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior stage cumulative indirect taxes levied on goods that are physically incorporated (making normal allowance for waste) in the exported product. Similarly, drawback schemes can allow for the remission or drawback of import charges levied on goods which are physically incorporated (making normal allowance for waste) in the exported product.

2. The Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement (the Code) makes reference to the term "physically incorporated" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior stage cumulative indirect taxes in excess of the amount of such taxes actually levied on goods physically incorporated in the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on goods that are physically incorporated in the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding physical incorporation. Paragraph (i) also provides for substitution, where appropriate.

II

In examining whether inputs are physically incorporated, as part of a countervailing duty investigation pursuant to the Code, investigating authorities should proceed on the following basis:

1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs physically incorporated, the investigating authorities should first determine whether the government of the exporting country has in place and applies a system or procedure to confirm which inputs are physically incorporated and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with Article 2:8 of the Code, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.

2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting country based on the actual products involved would need to be carried out in the context of determining whether an excess payment occurred. If the importing country deemed it necessary, a further examination would be carried out in accordance with paragraph 1 above.

3.[*] Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The signatories note that an input need not be present in the final product in the same form in which it entered the production process.

4.[*] In determining the amount of a particular input which is physically incorporated, a 'normal allowance for waste' should be taken into account, and such waste should be treated as physically incorporated. The term 'waste' refers to that portion of a given input which does not serve an independent function in the production process, is not physically present in the final product (for reasons such as inefficiencies) and is not recovered, used nor sold by the same manufacturer.

5. The investigating authority's determination of whether the claimed allowance for waste is 'normal' should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an important question is whether the authorities in the exporting country have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

---

[*] With respect to inputs, such as catalysts, which are consumed in the course of their use to obtain the exported product and which are not mere aids to manufacture, the relationship between signatories rights to grant remission or drawback of import charges in accordance with the rules laid down in the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) and its annexes and paragraphs 3 and 4 of these guidelines was not decided.

ANNEX III

Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies

I

Drawback systems can allow for the refund or drawback of import charges on goods which are incorporated into another product and where the export of this latter product contains domestic goods having the same quality and characteristics as those substituted for the imported goods. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Code) substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported goods for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to the Code, investigating authorities should proceed on the following basis:

1. Paragraph (i) of the Illustrative List stipulates that home market goods may be substituted for imported goods in the production of a product for export provided such goods are equal in quantity to, and have the same quality and characteristics as, the imported goods being substituted. the existence of a verification system or procedure is important because it enables the government of the exporting country to ensure and demonstrate that the quantity of goods for which drawback is claimed does not exceed the quantity of similar goods exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported goods in question.

2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with Article 2:8 of the Code, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.

3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting country based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the importing country deemed it necessary a further examination would be carried out in accordance with paragraph 2 above.

4. The existence of a substitution drawback provision where in exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

ANNEX IV

Calculation of the total ad valorem subsidization (Article 6.1(a))

1. Any calculation of the amount of a subsidy for the purpose of Article 6.1 above shall be done in terms of the cost to the granting government.

2. Except as provided in paragraphs 3-5, in determining whether the overall rate of subsidization exceeds [5] per cent of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's[1] sales in the most recent twelve-month period, for which sales data is available, preceding the period in which the subsidy is granted.[2]

3. Where the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm's sales of that product in the most recent twelve-month period, for which sales data is available, preceding the period in which the subsidy is granted.

4. Where the recipient firm is in a start-up situation, the overall rate of subsidization shall not exceed [15] per cent of the total funds invested. For purposes of this paragraph, a start-up period will not extend beyond the first year of production.[3]

5. Where the recipient firm is located in an inflationary economy country, the value of the product shall be calculated as the recipient firm's total sales (or sales of the relevant product, if the subsidy is tied) in the preceding calendar year indexed by the rate of inflation experienced in the twelve months preceding the month in which the subsidy is to be given.

6. In determining the overall rate of subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a signatory shall be aggregated.

7. Subsidies granted prior to the entry into force of this Agreement, the benefits of which are allocated to future production, shall be included in the overall rate of subsidization.

8. Subsidies which are non-actionable under relevant provisions of this Agreement shall not be included in the calculation of the amount of a subsidy for the purpose of Article 6.1 above.

---

[1] The recipient firm is a firm in the subsidizing country.

[2] In the case of tax related subsidies the value of the product shall be calculated as the total value of the recipient firm's sales in the fiscal year in which the tax related measure was earned.

[3] Start-up situations include instances where financial commitments for product development or construction of facilities to manufacture products benefiting from the subsidy have been made, even though production has not begun.

ANNEX V

Procedures for developing information concerning serious prejudice

1. Every signatory shall co-operate in the development of evidence to be examined by the Committee or its subsidiary bodies in procedures under Article 7 above, paragraphs 4 through 6. The parties to the dispute and any third signatory concerned shall notify the Committee, as soon as the provisions of Article 7.4 has been invoked, the organization responsible for administration of this provision within its territory and the procedures to be used to comply with requests for information.

2. In cases where matters are referred to in the Committee under Article 7.4 above, the Committee shall upon request, initiate the procedure to obtain such information from the government of the subsidizing signatory as necessary to establish the existence and amount of subsidizations, the value of total sales of the subsidized firms, as well as information necessary to analyse the adverse effects caused by the subsidized product.[1] This process may include, where appropriate, presentation of questions to the government of the subsidizing country and of the complaining country to collect information, as well as to clarify and obtain elaboration of information available to the parties to a dispute through the notification procedures set forth in Part VII above.[2]

3. In the case of effects in third country markets, a signatory party to a dispute may collect information, including through the use of questions to the government of the third country, necessary to analyse adverse effects, which is not otherwise reasonably available from the complaining signatory or the subsidizing signatory. This requirement should be administered in such a way as not to impose an unreasonable burden on the third country signatory. In particular, such a signatory is not expected to make a market or price analysis specially for that purpose. The information to be supplied is that which is already available or can be readily obtained by this signatory (e.g. that most recent statistics which have already been gathered by relevant statistical services but which have not yet been published, customs data concerning imports and declared values of the products concerned, etc.). However, if a signatory party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the authorities of the third country signatory and such a person or firm shall be given access to all information which is not normally maintained confidential by the government.

---

[1] In cases where the existence of serious prejudice has to be demonstrated.

[2] The information gathering process by the Committee shall take into account the need to protect information which is by nature confidential or which is provided on a confidential basis by any signatory involved in this process.

4. The Committee shall designate a representative to serve the function of facilitating the information-gathering process. The sole purpose of the representative shall be to ensure the timely development of the information necessary to facilitate expeditions subsequent to multilateral review of the dispute. In particular, the representative may suggest ways to most efficiently solicit necessary information as well as encourage the co-operation of the parties.

5. The information-gathering process outlined in paragraphs 2-4 above shall be completed within 60 days of the date on which the matter has been referred to the Committee under Article 7.4 above. The information obtained during this process shall be submitted to the Committee or to a panel established by the Committee in accordance with the provisions of Part X above. This information should include, inter alia, data concerning the amount of the subsidy in question (and, where appropriate, the value of total sales of the subsidized firms), prices of the subsidized product, prices of the non-subsidized product, prices of other suppliers to the market, changes in the supply of the subsidized product to the market in question and changes in market shares. It should also include rebuttal evidence, as well as such supplemental information as the Committee or the panel deems relevant in the course of reaching its conclusions.

6. If the subsidizing and/or third country signatory fail to co-operate in the information-gathering process, the complaining signatory will present its case of serious prejudice, based on evidence available to it, together with facts and circumstances of the non co-operation of the subsidizing and/or third country signatory. Where information is unavailable due to non co-operation by the subsidizing and/or third country signatory, the Committee or the panel may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the Committee or the panel should draw adverse inferences from instances of non co-operation by any party involved in the information-gathering process.

8. In making a determination to use either best information available or adverse inferences, the Committee or the panel shall consider the advice of the Committee representative nominated under paragraph 4 above as to the reasonableness of any requests for information and the efforts made by parties to comply with these requests in a co-operative and timely manner.

9. Nothing in the information-gathering process shall limit the ability of the Committee or the panel to seek such additional information it deems essential to a proper resolution to the dispute, and which was not adequately sought or developed during that process. However, ordinarily a panel should not request additional information to complete the record where the information would support a particular party's position and the absence of that information in the record is the result of unreasonable non co-operation by that party in the information-gathering process.

ANNEX VI

Procedures for on-the-spot investigations pursuant to Article 12.5

(a) upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations;

(b) if in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting country should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

(c) it should be standard practice to obtain explicit agreement of the firms concerned in the exporting country before the visit is finally scheduled;

(d) as soon as the agreement of the firms concerned has been obtained the investigating authorities should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

(e) sufficient advance notice should be given to the firms in question before the visit is made;

(f) visits to explain the questionnaire should only be made at the request of an exporting firm. In case of such a request the investigating authorities may place themselves at the disposal of the firm; such a visit may only be made, provided the authorities of the importing country notify the representatives of the government of the country in question and unless the latter do not object to the visit;

(g) as the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting country is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained;

(h) enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX VII

The least-developed country signatories

The following least-developed countries are contracting parties to GATT: Bangladesh, Benin, Botswana, Burkina Faso, Burundi, Chad, Central African Republic, Gambia, Haiti, Lesotho, Malawi, Maldives, Mauritania, Niger, Rwanda, Sierra Leone, Togo, United Republic of Tanzania, Uganda, Union of Myanmar. Least-developed countries applying the GATT on a de facto basis are: Cape Verde Islands, Equatorial Guinea, Guinea-Bissau, Kiribati, Mali, Mozambique, Sao Tomé and Principe, Yemen Democratic Republic and Tuvalu.

ANNEX VIII

List of Countries Undertaking Commitments in Accordance with Article 27(2)(b)[1]

	Initial export subsidy (percentage)	Time period			Level of permitted export subsidy rate per period as a percentage of initial export subsidy rate		
		Period 1	Period 2	Period 3	Period 1	Period 2	Period 3
Argentina	[x]	5 years	3 years	3 years	100	66	33
Bolivia	See Note 1						
Brazil	[x]	5 years	3 years	3 years	100	66	33
Cameroon	See Note 1						
Chile	[x]	5 years	3 years	3 years	100	66	33
Colombia	[x]	5 years	3 years	3 years	100	66	33
Congo	See Note 1						
Costa Rica	[x]	5 years	3 years	3 years	100	66	33
Côte d'Ivoire	See Note 1						
Dominican Rep.	See Note 1						
Egypt	See Note 1						
Gabon	[x]	0 years	0 years	0 years	0	0	0
Ghana	See Note 1						
India	See Note 1						
Indonesia	See Note 1						
Israel	[x]	0 years	0 years	0 years	0	0	0
Jamaica	See Note 1						
Kenya	See Note 1						
Madagascar	See Note 1						
Malaysia	[x]	5 years	3 years	0 years	100	50	0
Mauritius	[x]	5 years	3 years	0 years	100	50	0
Mexico	[x]	5 years	3 years	3 years	100	66	33
Morocco	See Note 1						
Nigeria	See Note 1						
Pakistan	See Note 1						
Peru	[x]	5 years	3 years	3 years	100	66	33
Philippines	See Note 1						
Senegal	See Note 1						
Singapore	[x]	0 years	0 years	0 years	0	0	0
Sri Lanka	See Note 1						
Thailand	[x]	5 years	3 years	3 years	100	66	33
Trinidad and Tobago	[x]	5 years	0 years	0 years	100	50	0
Tunisia	[x]	5 years	3 years	3 years	100	66	33
Turkey	[x]	5 years	3 years	3 years	100	66	33
Uruguay	[x]	5 years	3 years	0 years	100	50	0
Venezuela	[x]	5 years	3 years	0 years	100	50	0
Yugoslavia	[x]	5 years	3 years	0 years	100	50	0
Zaire	See Note 1						
Zambia	See Note 1						
Zimbabwe	See Note 1						

---

[1] The methodology used in establishing the list is used only for the purpose of establishing the length of time periods and the level of permitted export subsidy per period as a percentage

Note 1: A country shall undertake commitments consistent with the above criteria when GNP per capita (adjusted for other indicators, e.g. life expectancy at birth) has reached $1,000 per annum.

Note 2: It is recognized that a country that has reached export competitiveness in products shall be bound by the provisions of Article 3.1(a) for those products. Export competitiveness in a product consists of a country's exports of that product having reached a share of at least [4] per cent in world exports of that product. Export competitiveness shall exist either (a) on the basis of notification by the country having reached export competitiveness, or (b) on the basis of a computation undertaken by the secretariat at the request of any signatory.[1] For a country to which Note 1 above is applicable and which has reached export competitiveness in one or more products, export subsidies shall be progressively reduced over a period of [10] years. For the purpose of Annex VIII, a product is defined as a Section heading of the Harmonized System nomenclature.

Note 3: At the expiry of each period, if a country believes that it cannot immediately undertake the percentage reduction in the export subsidy rate prescribed for the following period, its situation will be examined annually by the Committee with a view to deciding on possible extension of the expiring period. Such extension shall be granted in any case where it can be shown that a country's development situation has not improved sufficiently as to warrant treatment different from that granted to it for that period. Evidence considered shall consist of the average annual rate of change of per capita GNP (adjusted for other indicators) as follows: an extension shall be granted if the rate of change of adjusted per capita GNP in the preceding five years is less than an average rate of 1.5 per cent per annum.[2]

---

[1] A country's share of a particular product will be computed on the basis of the value of a country's exports of that product and world exports of that product measured in United States dollars. All data are for the latest available year and are obtained by the secretariat.

[2] The average annual percentage change over a five-year period is computed using the least squares regression method. Data are obtained from World Bank sources and are for the latest available years.

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

The attached Decision Regarding Cases Where Customs Administrations Have Reasons To Doubt The Truth Or Accuracy Of The Declared Value; and texts contained in the Statement made by the Chairman of the Group on MTN Agreements and Arrangements on: (i) valuation of goods by some developing countries on the basis of officially established minimum values, and (ii) possible problems related to the valuation of importations into developing countries by sole agents, sole distributors and sole concessionaires have been agreed on an ad referendum basis.

Before the adoption of the above texts, the Chairman of the Negotiating Group on MTN Agreements and Arrangements made the following statement:

> "It is my understanding that the Decision and texts contained in the Statement have been agreed in the expectation that consideration of accession to the Customs Valuation Code will be facilitated and therefore participation in the Code will be increased. It is desirable that those contracting parties which are in a position to do so, would give an indication of intent to accede to the Code as soon as possible."

DECISION REGARDING CASES WHERE CUSTOMS ADMINISTRATIONS HAVE REASONS TO DOUBT THE TRUTH OR ACCURACY OF THE DECLARED VALUE

The CONTRACTING PARTIES invite the Committee on Customs Valuation to take the following decision:

Reaffirming that the transaction value is the primary basis of valuation under the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement);

Recognizing that the Customs Administration may have to address cases where it has reason to doubt the truth or accuracy of the particulars or of documents produced by traders in support of a declared value;

Emphasizing that in so doing the Customs Administration should not prejudice the legitimate commercial interests of traders;

Taking into account Article 17 of the Agreement, paragraph 7 of the Protocol to the Agreement, and the relevant decisions of the Technical Committee on Customs Valuation;

The Committee on Customs Valuation decides as follows:

1. When a declaration has been presented and where the Customs Administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the Customs Administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8. If, after receiving further information, or in the absence of a response, Customs still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 11, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1. Before taking a final decision, the Customs Administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the Customs Administration shall communicate to the importer in writing its decision and the grounds therefor.

2. It is entirely appropriate in applying the Agreement for one signatory to assist another signatory on mutually agreed terms.

STATEMENT MADE BY THE CHAIRMAN OF THE NEGOTIATING GROUP ON MTN AGREEMENTS AND ARRANGEMENTS

The Negotiating Group on MTN Agreements and Arrangements invites the CONTRACTING PARTIES to refer the following texts to the GATT Committee on Customs Valuation for adoption:

* * *

Where a developing country makes a reservation to retain officially established minimum values within the terms of paragraph 3 of the Protocol and shows good cause, the Committee shall give the request for the reservation sympathetic consideration.

Where a reservation is consented to, the terms and conditions referred to in paragraph 3 of the Protocol shall take full account of the development, financial and trade needs of the country concerned.

* * *

A number of developing countries considering accession to the Agreement have expressed concern that problems may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. Under Article 21.1, developing countries have a period of delay of up to five years prior to the application of the Agreement. In this context, countries availing themselves of this provision could use the period to conduct appropriate studies and to take such other actions as are necessary to facilitate application.

In consideration of this, the Committee recommends that the Customs Cooperation Council assist developing countries, in accordance with the provisions of Annex II, to formulate and conduct studies in areas identified as being of potential concern, including those relating to importations by sole agents, sole distributors and sole concessionaires.

AGREEMENT ON IMPLEMENTATION OF ARTICLE IX:1(b) OF THE AGREEMENT ON GOVERNMENT PROCUREMENT

1. The CONTRACTING PARTIES invite the GATT Committee on Government Procurement to clarify that:

(i) a contracting party interested in accession according to Article IX:1(b) would communicate its interest to the Director-General, submitting relevant information, including an offer by way of a list of entities having regard to the relevant provisions of the Agreement, in particular Article I and, where appropriate, Article III;

(ii) the communication would be circulated to Parties to the Agreement;

(iii) the contracting party interested in accession would hold consultations with the Parties on the terms for its accession to the Agreement;

(iv) with a view to facilitating accession, the Committee would establish a working party if the contracting party in question, or any of the Parties to the Agreement, so requests. The working party should examine: (a) the offer made by the applicant country; and (b) relevant information pertaining to export opportunities in the markets of the Parties, taking into account the existing and potential export capabilities of the applicant country, and export opportunities for the Parties in the market of the applicant country;

(v) upon a decision by the Committee agreeing to the terms of accession including the list of entities, the acceding contracting party would deposit with the Director-General to the CONTRACTING PARTIES to the GATT an instrument of accession which states the terms so agreed. The text of the acceding contracting party's list of entities in English, French and Spanish would be annexed to the Agreement.

2. It is noted that the Committee decisions are arrived at on the basis of consensus. It is also noted that the non-application clause of Article IX:9 is available to any Party.

AGRICULTURE

Commentary

1. The principal issues which need to be considered by Ministers for decision are set out in Appendix A. They have been derived from a thorough analysis of a survey of the offers (Appendix B).

2. In July 1990 the attached draft text (Appendix C) was considered in the Negotiating Group on Agriculture. Participants agreed that it should be used "as a means to intensify the negotiations".

3. From October 1990 to 21 November 1990 participants have tabled their agricultural offers.

4. In the area of sanitary and phytosanitary measures, the Working Group was able to establish a draft text representing a common negotiating basis (MTN.GNG/NG5/WGSP/7). This draft text is attached (Appendix D).

APPENDIX A

PRINCIPAL ISSUES FOR DECISION

Note by the Chairman of the TNC

1. Can the commitment taken at the Mid-Term Review in April 1989 not to exceed the levels of domestic and export support and protection then current be taken as the individual and collective starting point of the agricultural reform process?

2. As one of the elements in the reform process, can the commitment in respect of the substantial and progressive reduction of domestic support to agriculture take as its base the level of support subject to the Mid-Term Review commitment? In addition:

- what will be the rate and duration of the reduction?
- how will it be expressed and implemented (AMS or specific policy measures or a combination of both)?
- what scope and specificity of product coverage is to be agreed?
- what criteria are to be used to govern the exemption of certain support policies from reduction?
- what exemptions are needed for developing countries?

3. As one of the elements in the reform process, can the commitment to substantially and progressively reduce border protection be separately undertaken and take as its base the level of protection subject to the Mid-Term Review commitment? How should this commitment be expressed in concrete terms? In particular:

- what will be the rate and duration of the reduction, and its product coverage?
- what are to be the modalities of reducing protection: tariffication, reduction based on existing measures, or a combination of both? Reduction on the basis of strengthened and more operationally effective GATT rules? Formula and/or request-offer? Improvement of existing access?
- special safeguard provisions?

4. As one of the elements in the reform process, can the commitment to substantially and progressively reduce direct assistance to exports be separately undertaken and take as its base the level of export support subject to the Mid-Term Review commitment? What, then, will be:

- the rate and duration of the reduction?

- the modalities of reduction: through commitments on quantities, aggregate budgetary expenditure, or both?

- additional disciplines on export subsidies?

5. Can participants agree that special and differential treatment for developing countries should be given effect through, in particular, lesser commitments and longer implementation periods?

6. Can participants agree that the volume of food aid currently available will not be reduced as a result of the commitments to be undertaken? Furthermore, do they agree that specific provision will be made for net food-importing developing countries in order to alleviate possible effects on them of the reform process?

7. The main issues which remain to be resolved in respect of sanitary and phytosanitary barriers and regulations are the following (see MTN.GNG/NG5/WGSP/7):

- scope of the disciplines

- conditions of departure from international standards, guidelines or recommendations

- control, inspection and approval procedures.

8. What form of surveillance by an appropriate GATT body should be provided in respect of the commitments undertaken?

9. Can participants agree it should be understood that the commitments are aimed at initiating a continuing process of reform in agricultural trade in line with the agreed objectives of progressive and substantial reduction of support and protection to agriculture?

10. ...

APPENDIX B

AGRICULTURE - SURVEY OF OFFERS

This survey has been prepared by the secretariat on its own responsibility.

Internal support

1. In the area of internal support the Cairns Group, the EC, Finland, Mexico, Norway, Sweden and Switzerland have in their offers an overall ceiling on support (on the total of the 'amber' and 'green' categories). Austria and Korea are specifically opposed to an overall ceiling. Other countries do not make a direct reference to the issue. Among those countries in favour of an overall ceiling, different base years have been proposed: the EC, Finland and Sweden propose 1986, and the Cairns Group, Mexico and Norway propose 1988.

2. Concerning the policies subject to reduction, the range of offers is as follows:

Austria:	20 per cent in real terms over 10 years, base year 1988;
Cairns Group:	no less than 75 per cent over 10 years from 1991-92, base year 1988;
Canada:	up to 50 per cent over 10 years, base year 1988;
EC:	for AMS products, 30 per cent over 10 years from the base year 1986, for other products 10 per cent over the same period;
Finland:	20 to 30 per cent over 10 years from the base year 1986 as a result of reductions in export subsidies and other means;
Iceland:	25 per cent in real terms over 8 years from base year 1988;
India:	commitments in relation to the level of economic development;
Japan:	30 per cent in real terms over 10 years from base year 1986;
Korea:	up to 30 per cent over a 10-year period commencing 1997;
Mexico:	75 per cent over 10 years from 1991-92, base year 1986;

Norway:	20 per cent in real terms over 8 years from base year 1988;
Poland:	not less than 75 per cent over a 10-year period;
Romania:	a progressive reduction in real terms;
South Africa:	a reduction in line with other participants over 10 years from 1986 commensurate with its development needs, by way of more market-oriented policy measures;
Sweden:	30 per cent in real terms over a 10-year period from 1986 (prepared to increase the reduction to 40 or 50 per cent and consider different time periods as appropriate);
Switzerland:	20 per cent in real terms over 10 years from 1991, base 1989 or 1990;
United States:	no less than 75 per cent over 10 years from 1991-92 on a 1986 to 1988 average base period for commodity-specific support, and for non-commodity-specific support, a 30 per cent reduction over the same period.

Some countries explicitly link to their chosen base period of the reform commitment the concept of credit for measures that have contributed positively to the reform programme since the Punta del Este Declaration.

3. In addition, most countries agree on the need for flexibility to be available to developing countries concerning both the magnitude (for example, Cairns Group (reduce commitment by up to 50 per cent), India (dependent on level of economic development), Mexico (function of the ratio of the total AMS value over total value agricultural production), Romania, Sweden, United States) and time-frame (for example, Austria, Cairns Group (extend by up to 5 years), Finland, India (dependent on level of economic development), Korea (a grace period for structural adjustment), Mexico, Romania (extend by 5 years), Sweden, United States) for implementing reduction commitments. Mexico also proposes the exclusion from the reduction commitments of products of fundamental interest to developing countries, in their case, maize, beans and dairy products.

4. The use of an Aggregate Measurement of Support (AMS) is a point on which there are differing views. Austria, the EC, Iceland, Japan, Korea, Mexico, Norway and others offer commitments on the basis of the AMS, while the Cairns Group, Canada, Poland, Sweden, Switzerland and the United States offer commitments on specific policies in addition to, or instead of, on the AMS. Finland notes that reductions in internal support will result from reductions in export subsidies and other means and South Africa notes that reductions will result from the introduction of more market-related policy measures.

5. Insofar as the AMS is used for commitments, it is generally accepted that equivalent commitments should be made for products where the calculation of an AMS is not practicable. The Cairns Group and United States offer commitments based on producer price support and budgetary outlays. The EC offers, as a basis for equivalent commitments, production aid for certain products and border measures for others. Sweden offers mainly tariff reductions on these products, while Norway offers reductions in budgetary outlays. Japan offers commitments on tariffs for some products for which AMS commitments are not offered. Austria also offers product-related specific commitments where an AMS is not practicable.

6. Concerning policy coverage of the reduction commitments, whether under the AMS or equivalent commitments, there is a difference between the offers concerning whether the 'amber' category (policies to be reduced) is a residual of the 'green' (or exempt) category or vice versa. Japan and Korea favour the latter approach while other offers adopt the former.

7. The Cairns Group, Canada, Mexico, Sweden and the United States propose some criteria to help govern the allocation of present and future support policies to either the green or amber category. In addition, there are certain policies that most participants agree should be exempt from reduction commitments. These include general services, disaster relief, domestic food aid, and resource retirement programmes. Where specific criteria are proposed, they have in most cases reflected this recognition. However, the question remains whether derogations from a general set of criteria are necessary in order to enable countries to exempt from reduction certain policies which may otherwise fall into the amber box. In particular, more flexible conditions for exempting support given as part of environmental or regional programmes have been advanced by Austria, Finland, Iceland, Japan, Korea, Norway, Sweden and Switzerland.

8. On the other hand, the Cairns Group, Mexico and the United States use a similar set of proposed criteria for exempting policies from reductions and do not propose any departure from the generally applicable conditions, other than in respect of developing countries. Canada links policy categories to countervailability.

9. Further examples of the different treatment of policies between green and amber by different participants include: income supports or safety nets - which the EC places in the amber box while the Cairns Group, Canada and the United States place them in the green box; and investment subsidies which, conversely, the EC exempts from reduction while the Cairns Group and United States offer to place them in the amber box.

10. The policy coverage aspect is also important to establish a means for special and differential treatment for developing countries. The Cairns Group, India, Korea, Mexico, Romania and the United States explicitly recognize that the 'green box' for developing countries should be wider than that for developed countries to allow the continuation and initiation of programmes to further development in these countries. The Cairns Group, India, Korea, Mexico and the United States propose different specific provisions to implement special and differential treatment for developing countries.

There are many other issues under internal support that remain outstanding. These include:

- the use of an AMS per unit (offered by Japan and Korea for certain products), versus a total AMS (favoured by most other participants);
- whether the AMS is to be on a commodity-specific basis (offered by Austria, the Cairns Group, Mexico and the United States) or a product sector basis (as offered, at least as an alternative, by Canada, the EC, Japan, Korea, Norway, Poland and Sweden);
- the use of a sector-wide non-commodity-specific AMS for generally available "amber" policies (offered by the Cairns Group, Mexico and the United States). Austria offers an aggregate value for non-product-related support measures;
- the use of an annual or moving average reference price in those cases where domestic prices are directly linked to world prices (proposed by the Cairns Group);
- the use of a fixed reference price for the calculation of the value of direct payments based on support prices, in addition to the calculation of market price support (offered by the United States);
- the exclusion of the effects of border measures from the AMS (offered by the Cairns Group, Mexico and the United States);
- the adjustment of the AMS to take account of supply controls, including set-aside (offered by Canada, the EC, Japan, Norway, Switzerland and the United States), and import ratios and production restriction ratios for basic foodstuffs (offered by Japan);
- a de minimis approach to commitments where AMSs or equivalent policies are of only a limited size (offered by the Cairns Group);
- a means of taking inflation into account to ensure equitable commitments (offered by Austria, the Cairns Group, Finland, Iceland, Japan, Korea, Mexico, Norway, Sweden, Switzerland and the United States).

Market Access

11. In the area of market access, issues include both the modalities for reform, and of course the reduction amount. Most participants include tariffication in their offers. India and Japan do not; nor does Poland, where border protection is already tariff based, and Romania, which has notified a programme of liberalization of non-tariff measures. However of those who offer tariffication, a number of countries limit the scope to certain products. Offers are made to tariffy:

Austria: specified products excluding those subject to supply control measures covered by an improved Article XI:2(c)(i);

Cairns Group: all products;

Canada: all products except those subject to non-tariff measures explicitly allowed by the new or revised GATT rules;

EC: AMS products plus table wine, dried grapes, processed cherries and some fruit and vegetables;

Finland: all products except certain supply-controlled products and others for which variable levies or policies with similar effects will continue to be applied (details are still to be provided);

Iceland: all products except milk and meat products and live animals;

Korea: all products except those which are essential to maintain stable levels of farm income, products essential for the maintenance of the level of agricultural production necessary to meet non-trade objectives, and those products covered by Article XI:2(c)(i) - (i.e., tariffy all products except rice, barley, soybeans, maize, red peppers, garlic, onions, sesame seeds, white potatoes, sweet potatoes; citrus fruits, beef, pork, chicken, milk and dairy products). Non-tariff measures will be converted over a seven-year period beginning in 1991;

Mexico: all products with non-tariff measures in 1986 not resulting from previous GATT negotiations. Conversion into tariff equivalents, independently from the level of current duties, of all non-tariff measures removed since 1986.

Norway: all products except milk and some milk products (based on Article XI:2(c)(i)), meat from reindeer, deer and elk, and products with unbound tariff rates - (i.e., live animals, primary and processed meat products, eggs and potatoes);

South Africa: all products where possible;

Sweden: all products;

Switzerland:	all products except those necessary for the maintenance of Swiss agriculture, the achievement of non-trade objectives, products subject to supply controls and those products for which tariffication would be technically impossible - (i.e., tariffy all products except milk products, beef and veal, pork, sheep and goat meat, sugar, fruit and vegetables, cereals for human consumption, potatoes and white wine);
United States:	all products.

12. Several participants (Austria, the EC, Iceland, Norway, Sweden and Switzerland) have incorporated in their tariffication offer a corrective factor or stabilizer that compensates for at least part of world price and currency fluctuations. The Cairns Group and United States offers do not include a corrective factor. They propose a special safeguard provision based on price fluctuations and import surges allowing temporary recourse to defined tariff surcharges subject to notification but without compensation. Mexico offers a special safeguard that would allow a temporary suspension of the reduction commitment subject to notification. Switzerland offers, in addition to the corrective element, a volume-based safeguard. Finland and Korea offer safeguards allowing recourse to quantitative restrictions (on a temporary basis in Finland's case). In many offers, the duration of the corrective factor or safeguard is unclear. In Korea's case however, it is to be on a permanent basis, and for the Cairns Group and United States it is to be available for the transitional period only. Finland, Iceland and Norway propose to introduce variable levies for some products not included in tariffication. Of the above countries, all limit the use of the corrective factor or special safeguard to some or all of the products for which tariff equivalents or fixed components have replaced non-tariff measures except Finland, Korea, Switzerland and the United States who do not specify the coverage of such provisions.

13. Support for maintaining quantitative import restrictions under defined conditions mainly using Article XI:2(c)(i) (in some cases revised) has been expressed in the offers of a number of participants including: Austria, Canada, Finland, Iceland, Japan, Korea, Norway and Switzerland. Some of these countries have provided proposed redrafts of part or all of the Article or have indicated that they are willing to negotiate revisions. The continuation of Article XI:2(c)(i) is not an element in the offers of the Cairns Group, Mexico or the United States. In addition, Japan has proposed establishing a rule for border adjustment measures concerning the basic foodstuffs.

14. The concept of maintaining current access opportunities on current terms is part of the offers of the Cairns Group, Canada, the EC, Korea (for products subject to tariffication), Mexico, Switzerland (for those products where non-tariff measures apply) and the United States. Japan has offered to consider the maintenance of current access opportunities taking into account other factors. There is less agreement on the setting of a minimum access level to apply across the board. Access levels from 1 per cent of domestic consumption (Austria and Korea), through 3 per cent (the United States) to 5 per cent (the Cairns Group) have been offered, and Canada offers 1 per cent or 5 per cent of production (depending on previous import levels) for Article XI:2(c)(i) products. Finland offers minimum access under the current or revised Article XI:2(c)(i). Mexico offers minimum access at a level to be negotiated. Minimum access offers are also sometimes subject to exceptions for particular products or groups of products, such as basic foodstuffs in the case of Korea. Among participants who have offered the maintenance of existing, or the establishment of new minimum access, the Cairns Group, Canada (for tariffied products), Mexico and the United States have offered to expand this access over the implementation period. The use of tariff rate quotas to implement current or minimum access undertakings is proposed in many of the above offers.

15. The EC has drawn the linkage between tariffication and "rebalancing" which involves introducing tariff equivalents and tariff quotas for some products to reduce current serious disequilibria in support and protection. Other participants have noted that should rebalancing be agreed, it should be available to all participants (Austria and Sweden). Rebalancing is not an element in other offers.

16. The commitments offered on tariff equivalents and existing tariffs include:

Austria:	for tariff equivalents, a linear 20 per cent over 10 years; for most other tariffs, a weighted average reduction of 19.65 per cent over the same period;
Cairns Group:	the binding and trade weighted 75 per cent reduction over 10 years with a minimum of 50 per cent reduction per tariff line and a ceiling binding of 50 per cent at the end of the transition period;
Canada:	existing tariffs reduced using a harmonizing formula over 10 years by a maximum reduction of 38 per cent per tariff line, tariff equivalents reduced using a harmonizing formula for a 50 per cent reduction or to a ceiling binding of 20 per cent (whichever is the greater) over the same period (or longer if negotiated);

EC: binding and annual reduction in tariff equivalents (fixed components) by an absolute amount reflecting the incidence of the internal support reduction;

Finland: to be shown in the specific offer - varying product to product, resulting in a 5 to 10 per cent reduction in border protection by 1996;

Iceland: up to 25 per cent reduction in tariff equivalents by 1996;

India: obligations depending on development level;

Japan: for those products for which an AMS commitment is not made and for which import restrictions are not applied, a target tariff reduction rate via request/offer equivalent to the reduction rate for all agricultural products implemented by Japan in the Tokyo Round;

Korea: tariff equivalents by up to 30 per cent over a 10-year period commencing 1991 (expansion of the scope of tariff bindings);

Mexico: for tariff equivalents, a negotiated elimination, for normal tariffs, the Mid-Term Review target on tariffs and consequent binding of all agricultural products;

Norway: for fixed elements resulting from tariffication 10 per cent reduction by 1996 for milk products, grains, seed grains and feed concentrates, 20 per cent reduction for remaining products for which a tariff equivalent with a corrective factor is established. Thirty per cent for tariff equivalents with no corrective factor - i.e., honey, plants and parts thereof, and other primary and processed products formerly subject to quantitative restrictions;

Poland: in line with other participants and development needs;

Romania: specific tariff offers;

South Africa: a reduction in line with other participants over 10 years from 1986 and commensurate with development needs;

Sweden: binding and reduction of the fixed component by an amount corresponding to internal support commitments (i.e., a 30 per cent reduction in internal support implies an estimated reduction in border protection of 10 to 15 per cent), for normal tariffs 30 per cent;

Switzerland: reduction of tariff equivalents reduced by an amount proportional to reductions in internal support over 10 years from 1991, for tariff-only products, 20 per cent over 10 years (some additional bindings);

United States: binding and reduction on a formula basis of no less than 75 per cent over 10 years commencing 1991-92 for all tariffs and tariff equivalents with a 50 per cent *ad valorem* equivalent ceiling following the implementation period.

17. Most offers (including those of Austria, the Cairns Group, Finland, India, Korea, Mexico, Romania, Sweden and the United States) include some flexibility for *developing countries* in the implementation of commitments (especially in terms of longer time-frames where an additional 5 years is proposed by the Cairns Group, Mexico and Romania). In addition the Cairns Group proposes that, for developing countries, the depth of cut in tariffs and tariff equivalents should be no less than 45 per cent of that applying to developed countries.

18. The offers also indicate *other market access issues* where participants differ significantly, such as:

- modalities of tariffication, i.e., the means by which tariff equivalents or fixed components are calculated. The EC offers to calculate tariff equivalents using the difference between their intervention price plus 10 per cent and the world market or import price, while most other participants use the difference between the average price ruling in the domestic market price and the c.i.f. or other world price. In addition, the EC proposes to convert part of their deficiency payments into tariff equivalents. Of those that specify base years in their offers, the EC and United States use the 1986 to 1988 average and Mexico uses the most recent period for which data are available;

- those offers that make specific proposals on the treatment of processed products in tariffication include: the EC (replacing the import charge with a fixed component derived from the basic commodities) and Finland (a reduction of processed product tariff equivalents at same rate as industrial products).

Export competition

19. In terms of the definition of export subsidies, the Cairns Group, Mexico and United States have offered similar lists of programmes to be covered although the Cairns Group and Mexico include payments to producers of a product which result in the price or return to the producers of that product when exported being higher than world market prices or returns (including deficiency payments) while the United States excludes these. Finland and Sweden exclude compensation for agricultural raw materials in processed products from their commitments.

20. Offers include the following commitments on export subsidies:

Austria:	reduction of total budgetary outlay, from 1989 base year, to the extent which will result from reductions of internal measures, taking into account exchange rate fluctuations;
Cairns Group:	reduction of budgetary outlays, per unit export assistance and quantities of subsidized exports by no less than 90 per cent over 10 years from 1991-92 on an average 1987 to 1989 base;
Canada:	phase-out of existing government-funded export subsidies over 10 years;
EC:	the proposed reduction of support and protection will lead to a considerable reduction of export subsidies in global expenditure as well as in unit terms on the assumption that world prices remain stable. The EC is ready to quantify these and other elements in its offer;
Finland:	reduction of 60 per cent over 5 years from 1986 level (with further reductions to be agreed);
Iceland:	reduction of up to 65 per cent of budgetary outlays and revenue foregone by 1996 based on a 1986 to 1989 average (prepared to continue further reductions after 1996 with the aim of abolition);
India:	possible appropriate disciplines once developed country production and export subsidies are eliminated;
Mexico:	total and immediate elimination of export subsidies;

Norway:	eliminate all budgetary outlays on export subsidies by 1996;
Poland:	eliminate all budgetary assistance of exports over a period not exceeding 5 years;
Romania:	30 per cent progressive reduction in budgetary outlays;
South Africa:	a reduction in line with other participants and commensurate with development needs and political developments;
Sweden:	eliminate all export subsidies except compensation for agricultural raw materials in processed products and food aid;
Switzerland:	reduction by 30 per cent in real terms of budgetary outlays over a period of 10 years from a 1989 or 1990 base except compensation for agricultural raw materials in processed product exports which will be reduced in line with internal prices;
United States:	reduction of both budgetary outlays and quantities exported by at least 90 per cent over 10 years from 1991-92 on a 1986 to 1988 base. Export subsidies on processed products to be eliminated over 6 years. Producer-financed export subsidies to be subject to the reduction commitment.

In addition to the above commitments, many participants propose additional disciplines on the use of export subsidies:

- rules and disciplines to be negotiated (Austria);
- targeted export subsidies to be progressively eliminated (the Cairns Group);
- no provision of export subsidies to products or markets in respect of which export subsidies were not provided in the 1987 to 1989 period (the Cairns Group);
- new government-funded export subsidies to be prohibited (Canada);
- export subsidies should have an upper limit and not be used to increase trade share for particular commodities from those shares held in the 1986 to 1988 period (Canada);

- limit on export subsidies to the difference between the exporter's domestic price and the world market price (the EC);
- limit on export subsidies to the level of the import charge applied on the same product when imported into the exporting country (the EC);
- enforcement of the notion of 'equitable' market share in Article XVI:3 (the EC);
- limit on subsidies applied to exports of agricultural commodities incorporated in processed products to the difference between the exporter's domestic price and the world market price of the agricultural products concerned (the EC);
- extension of the OECD "Consensus" on export credits to agricultural products and its incorporation into the GATT (the EC);
- no provision of export subsidies to commodities in respect of which export subsidies were not provided in the past (the EC);
- development of clearer rules on policies that equalize the difference between world market and domestic prices on raw material components of the food processing industry (Finland);
- producer-financed export subsidies should be tightly circumscribed (Sweden);
- no provision of export subsidies to basic products not already receiving them (Switzerland);
- export subsidies on processed products will be reduced in line with reductions of internal prices (Switzerland).

21. The issue of food aid is also important in terms of export subsidies - in terms of the potential for the circumvention of commitments, but more importantly in terms of continuing to provide assistance to developing countries, especially net food-importing developing countries, in meeting the food needs of their people. The Cairns Group and the United States have offered disciplines to ensure these objectives such as seeking to assure a sufficient level of food aid to ensure that any increase in the prices of essential food imports does not affect access to food supplies (Cairns Group and the United States). The United States has also offered the provision of food aid in accordance with the FAO Committee on Surplus Disposal "usual marketing requirements" system (and other countries also note the need for commitments or improved rules on concessional sales and food aid).

22. Another issue on which agreement needs to be reached is that of measures necessary to help net food-importing developing countries maintain their supplies of basic foodstuffs should world prices rise significantly during the implementation period. This is recognized in the offers including those of the Cairns Group and the United States. The United States proposes an agreement to recognize that countries concerned may be eligible to draw on the resources of international financial institutions under certain conditions.

Other

23. Sanitary and phytosanitary rules and disciplines - refer to document MTN.GNG/NG5/WGSP/7 of 20 November 1990.

Implementation of Commitments

24. Some offers propose means of implementing the commitments made. These include:

Cairns Group:	commitments on internal support, border protection and export competition will be bound in country schedules annexed to Article II of the General Agreement;
Japan:	the establishment of rules to ensure the fulfilment of commitments and to allow consultation where commitments are not met;
Sweden:	annual implementation plans showing how generally applicable rates of reduction can be operationalized in country reforms. These plans will be monitored in a body to be established in order to follow up the Uruguay Round reform in agriculture;
Switzerland:	mechanism of surveillance and review must be introduced so as to ensure the respect of commitments taken by participants;
United States:	country plans submitted in advance will constitute a binding commitment for each participant.

APPENDIX C

FRAMEWORK AGREEMENT ON AGRICULTURE REFORM PROGRAMME

DRAFT TEXT BY THE CHAIRMAN

(MTN.GNG/NG5/W/170)

Introduction

1. In line with the requirements set out by the Chairman of the TNC at its eleventh meeting (MTN.TNC/14 refers) the following text outlines a framework of modalities for negotiation leading to agreement on the Reform Programme which has been adopted by participants in the Negotiating Group on Agriculture on .... Its purpose is to establish a basis for initiating the reform process in line with the objectives of the negotiations as set out in the Punta del Este Declaration and the Mid-Term Review Agreement. Participants note that their agreement to this text is conditional both on the satisfactory negotiation of certain issues within it and on the overall balance of agreements in the Round as a whole. The framework covers the following: internal support, border protection, export competition, reduction targets, sanitary/phytosanitary regulations and barriers, rules, surveillance, and provides a basis for taking account in the negotiation of non-trade concerns, special and differential treatment for developing countries, and the situation of net food-importing developing countries.

A. INTERNAL SUPPORT

2. Participants agree that a substantial and progressive reduction of internal support to agriculture shall be implemented so as to minimize trade distortion and increase the market orientation of production, while maintaining the possibility for contracting parties to pursue national policy goals affecting agriculture through policies with minimal trade effects.

3. Accordingly, the Mid-Term Review commitment by developed countries not to exceed current levels of support per commodity (MTN.TNC/11, paragraph 14 refers) shall continue in force for the duration of the implementation period to be agreed for the results of these negotiations. Furthermore, all internal support with the exception of policies which meet certain

agreed criteria shall be reduced from 1991-92 over an agreed number of years at a rate to be negotiated in line with paragraph 2 above, using an Aggregate Measure of Support as described below.

4. The progressive and substantial reduction of all internal support to agriculture other than that whose exemption is agreed under paragraphs 9-11 below shall apply at national and sub-national level. This commitment shall encompass market price support, including any measure which acts to maintain producer prices at levels above those prevailing in international trade for the same or comparable products, and taking account of levies or fees paid by producers; direct payments to producers other than those which may be exempted on the basis of the agreed criteria, including deficiency payments and taking account of levies or fees paid by producers; and input and marketing cost reduction measures available only in respect of agricultural production, including credit and other financial input assistance and taking account of input taxes.

5. Participants agree that an Aggregate Measure of Support (AMS) shall be used in the expression and implementation of the commitments to substantial and progressive reduction set out above, with equivalent commitments for products where an AMS cannot be calculated. The AMS will be expressed by total monetary value per commodity using the base year 1988 and a fixed reference price based on 1986-88 data. It will be applied for a negotiated period. The fixed reference price may be subject to periodic reassessment. The policy coverage of the AMS for the purpose of commitments shall include the policy categories noted in paragraph 4 above as well as any other policies not qualifying for exemption on the basis of the agreed criteria (see paragraph 9 below).

6. Participants will submit, no later than 1 October 1990, country lists drawn up according to the following parameters:

(a) the level of support per commodity which is proposed to be bound as an overall ceiling;

(b) the policies proposed for exclusion from the commitment to substantial and progressive reduction on grounds of their conformity with the criteria outlined below;

(c) the products for which an AMS can be calculated;

(d) for each of the above products, the AMS base level to be subject to reduction.

7. Participants also agree that, where the calculation of an AMS is not practicable, the products concerned shall be subject to equivalent commitments which are to be specified in conjunction with the country lists.

8. The policies which may be excluded from the commitment to progressive and substantial reduction, but which will remain subject to the overall ceiling on support as well as to surveillance and review on a basis to be

agreed, shall include programmes aimed at providing general services of a generally beneficial public nature to agriculture and the rural community;* environmental and conservation programmes; resource diversion and retirement programmes; bona fide disaster relief, crop insurance and domestic food aid; public stockholding for food security purposes; regional development and income safety-net programmes. Such policies must conform to criteria which are to be based on the following elements:

(a) the assistance must be provided through a taxpayer-funded government programme not involving transfers from consumers;

(b) it must not be linked to current or future levels of production or factors of production, except to remove factors from production;

(c) it must not be restricted to to any specific agricultural product or product sector;

(d) it must not have the effect of providing price support to producers;

(e) in the case of income safety-net programmes, it must not maintain producer incomes at more than [x] per cent of the most recent three-year average.

The condition in (c) above shall not apply to general services.

9. The formulation as necessary of more specific criteria based on the elements above shall take account of the proposals in the country lists. This process will also allow for the possibility of negotiating additional requirements where justified. The criteria thus agreed will continue in force as part of the result of the negotiation.

10. In conjunction with the arrangements for monitoring and surveillance, a basis will be agreed for review of the initial assignment of a specific policy or policies to the category exempt from substantial and progressive reduction. Where in the course of such review a policy cannot be shown to have satisfied the agreed criteria for inclusion in this category, it shall be placed under the commitment to substantial and progressive reduction. The treatment of any new policies, including the modification of current policies, shall be decided on a similar basis following their prior notification. The review process will also provide the means of taking account of excessive rates of inflation in relation to the implementation of commitments.

---

*Including: research, advisory and training programmes; inspection; pest and disease control; marketing and promotion.

11. Flexibility concerning the nature and extent of commitments and the timing of their implementation may be accorded to developing countries, on a basis to be agreed, in keeping with the recognition in the Mid-Term Review Agreement that assistance to agriculture to encourage agricultural and rural development is an integral part of the development programmes of these countries. In particular, developing countries' assistance to agriculture in pursuit of development objectives shall be exempt from the reduction commitments set out above, provided that (i) it has no, or a minimal, effect on trade and that (ii) it does not act to maintain domestic prices higher than free-at-frontier prices for like products.

B. BORDER PROTECTION

12. Participants agree that, in order to foster the market orientation of domestic policies which should result from commitments on internal support, market access opportunities will be improved in line with substantial and progressive reductions of support and protection. Accordingly, participants agree to negotiate commitments on all border measures on the basis of country lists covering all products subject to these measures. Relevant non-trade concerns shall be accommodated to the maximum possible extent within this approach. These country lists shall be tabled by 1 October 1990 and built on the following parameters:

(a) conversion of all border measures other than normal custom duties into tariff equivalents, irrespective of the level of existing tariffs; the modalities of such a conversion should be based on the existing gap between external and internal prices as close as possible to actual prices and following the guidelines contained in Annex I;

(b) binding of these tariff equivalents;

(c) maintenance of current access opportunities on terms at least equivalent to those existing through, inter alia, tariff quotas;

(d) in the case of absence of significant imports, establishment of a minimum level of access from 1991-92, also on the basis of tariff quotas at low or zero rate and representing at least [x] per cent of current domestic consumption of the product concerned;

(e) for products subject to normal custom duties only, current access opportunities shall be maintained on terms at least equivalent to those existing; in particular, all existing tariff rates shall be bound.

13. Participants also agree that the tabling of these country lists shall be without prejudice to the possibility of negotiating specific solutions in case of particular situations which may exist for some products.

14. All tariffs and tariff equivalents as agreed on the basis of the country lists shall be substantially and progressively reduced from 1991-92 at an average rate and over a number of years to be negotiated in line with paragraph 2 above. Tariff quotas as agreed on the basis of the country lists shall be expanded at an average rate and over a number of years to be negotiated as above. This would allow for the possibility of negotiating specific rates of reduction of tariff equivalents and/or specific rates of expansion of tariff quotas in case of particular situations which may exist for some products. All access opportunities over and above existing levels shall be on an m.f.n. basis.

15. Participants further agree that in implementing the commitments on market access, the particular needs and conditions of developing countries shall be fully taken into account by providing, inter alia, for a faster rate of reduction of tariffs and tariff equivalents and/or a faster rate or expansion of tariff quotas for products of particular interest to these countries. Developing countries shall also be allowed, where necessary, to give effect to the implementation of their commitments in a way commensurate with their development needs.

16. With respect to the implementation of the above commitments, participants agree that special safeguard provisions will be negotiated which should enable recourse to tariff increases, subject to notification requirements but without compensation, and which will become operative in case of import surges or world price movements, expressed in terms of domestic currencies, which exceed limits to be agreed. Such tariff increases would only remain in force as long as the conditions for their implementation continue to exist. Tariffs will then return to levels consistent with the commitments undertaken.

C. EXPORT COMPETITION

17. Participants agree that, in line with the objective of establishing a fair and market-oriented agricultural trading system, direct budgetary assistance to exports, other payments on products exported and other forms of export assistance are to be substantially and progressively reduced and that the use of permitted export assistance will be subject to strengthened and more operationally effective GATT rules and disciplines.

18. Participants agree that the commitments to reduce export assistance shall result in such assistance being reduced effectively more than other forms of support and protection and that these commitments may take the form of commitments to progressively reduce aggregate budgetary outlays on export assistance, per unit export assistance, the total quantity of a product in respect of which export assistance may be provided, or some combination of such commitments.

19. The annual average for the three most recent financial or marketing years in respect of budgetary outlays, per unit export assistance and quantities of subsidized exports shall constitute the base for negotiating an agreed percentage reduction in export assistance over an implementation period of [y] years.

20. Accordingly by 1 October 1990 participants shall table country lists for each of the three most recent financial or marketing years providing data on financial outlays or revenue foregone at the national and sub-national level in respect of:

(a) direct financial assistance to exporters to compensate for the difference between the internal market price in the exporting country and world market prices;

(b) payments to producers of a product which result in the price or return to the producers of that product when exported being higher than world market prices or returns;

(c) costs related to the sale for export of publicly owned or financed stocks;

(d) assistance to reduce the cost of transporting or marketing exports;

(e) export credits provided by governments or their agencies on less than fully commercial terms;

(f) the provision of financial assistance in any form by governments and their agencies to export income or price stabilization schemes operated by producers, marketing boards or other entities which play de facto a dominant role in the marketing and export of an agricultural product;

(g) export performance-related taxation concessions or incentives;

(h) subsidies on agricultural commodities incorporated in processed product exports.

21. Corresponding data for the base period shall also be tabled on the quantities of subsidized exports and on related per unit export subsidies.

22. Concurrently negotiations shall proceed on disciplines to govern the use of export assistance including, inter alia: (i) conditions designed to eliminate targeted export subsidy practices; (ii) conditions governing government participation in the operation of producer-financed export subsidy schemes; (iii) disciplines relating to subsidies on agricultural commodities incorporated in exported products; (iv) disciplines on export credits; and (v) disciplines on food aid and concessional sales.

23. The disciplines to be negotiated on food aid and concessional sales shall ensure that supplies of basic foodstuffs are available to least developed and net food-importing developing countries on appropriate terms and conditions.

D. REDUCTION TARGETS

24. Participants will negotiate the amount and duration of the substantial and progressive reductions in support and protection as soon as the country lists are tabled as agreed above.

E. SANITARY AND PHYTOSANITARY REGULATIONS AND BARRIERS

25. Participants agree to conduct negotiations on sanitary and phytosanitary[*] regulations and barriers on the basis of the text contained in Annex II.

F. RULES AND DISCIPLINES

26. Participants agree that concurrently with the negotiation of the commitments outlined above, they will undertake negotiations aimed at strengthening GATT rules and disciplines and making them more operationally effective in line with the long-term objective of the agricultural negotiations as agreed in the Mid-Term Review (MTN.TNC/11, paragraph 5 refers).

G. SURVEILLANCE

27. Arrangements for the surveillance of the implementation of the commitments negotiated on the basis of this framework shall be agreed by the end of the negotiation. Similar arrangements will also be agreed to provide as necessary for review of certain aspects of commitments as indicated in the preceding chapters.

---

[*] Document MTN.GNG/NG5/WGSP/7 refers.

ANNEX I

Guidelines for tariffication

The calculation involved in the conversion of border measures other than normal customs duties into tariff equivalents must be carried out in a transparent manner using data, data sources and definitions that are made available to all contracting parties. Following the estimation of initial tariff equivalents, their rates will be subject to scrutiny and negotiation by interested contracting parties.

The calculation of the initial tariff equivalents will use the following guidelines:

(a) data used will be for the most recent period available;

(b) calculations will be carried out for all principal products traded. This implies that:

  (i) for major commodities, calculation would generally be made at the four-digit level of the HS;

  (ii) for other products, including for individual fruits and vegetables, calculation would be made up to the six-digit level of the HS;

(c) in all cases initial tariff equivalents for products derived from principal products would be calculated by multiplying the initial tariff equivalents for the principal product(s) by the proportion of principal product(s) in the derived product;

(d) the initial tariff equivalent calculation for the principal product should be adjusted as necessary to take account of differences in quality or variety using an appropriate coefficient;

(e) external prices would be, in general, actual c.i.f. unit values for the importing country;

(f) where c.i.f. unit values are neither available nor appropriate, external prices would be either: (i) appropriate c.i.f. values of a near country; or (ii) estimated from f.o.b. values of an appropriate major exporter adjusted by adding an estimate of c.i.f. costs;

(g) in all cases external prices would be converted to domestic currencies using the annual average market exchange rate for the same periods as the price data;

(h) the internal price would be the average price ruling in the domestic market;

(i) initial tariff equivalents would be expressed as ad valorem or specific rates.

APPENDIX D

DRAFT TEXT ON SANITARY AND PHYTOSANITARY MEASURES

(MTN.GNG/NG5/WGSP/7)

Commentary

The attached text is being submitted on the sole responsibility of the chairman of the Working Group on Sanitary and Phytosanitary Measures. Nonetheless it does, in the chairman's view, accurately reflect the widespread consensus of participants of the Working Group with respect to most of its provisions. Brackets identify the principal issues where disagreement remains, and, when appropriate, alternative phrases have been provided.

Many of the brackets are interlinked and in such cases a single decision will suffice to determine the retention or elimination of several bracketed phrases. In this regard, the first set of brackets in paragraph 4, the brackets in paragraphs 16 and 21, and the brackets in the note to definition 1 and in definition 4 (Annex A) are all linked to the question of whether or not this agreement should apply to measures taken for the protection of animal welfare and of the environment, as well as of consumer interests and concerns (see Note to definition 1). The brackets in paragraph 6 are linked to the decision with respect to sub-national obligations in paragraph 46. On the other hand, the alternatives in paragraphs 10, 18 and 29 represent different positions, with some participants maintaining that if alternative 2 for paragraph 10 is finally retained, the text which appears in the second set of brackets in paragraph 4 would also be necessary.

The brackets of paragraphs 36 and 37 are, as indicated by the note to these paragraphs dependent on the final form of the agreement, whereas the brackets of paragraphs 42, 44 and 45 indicate an apparent lack of consensus with respect to the proposed monitoring procedure. Finally, provisions for the entry into force of the agreement and its subsequent review, paragraphs 48 and 49, respectively, are also bracketed pending decisions in this regard.

Given the desire of participants for the application of the proposed disciplines to all contracting parties, this draft has been presented in the form of a Decision by the CONTRACTING PARTIES on the Application of Sanitary and Phytosanitary Measures. This is, however, without prejudice to the final form the agreement might take.

This draft text may subsequently be reproduced as part of the text prepared in respect of the agricultural negotiations as a whole.

DECISION BY CONTRACTING PARTIES ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

The CONTRACTING PARTIES,

Reaffirming that no contracting party should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade;

Desiring to improve the human health, animal health and phytosanitary situation in all contracting parties;

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the adoption, development and the enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between contracting parties, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention;

Recognizing that developing contracting parties may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing contracting parties, and as a consequence, in access to markets, and also in the formulation and application of sanitary or phytosanitary measures in their own territories, and desiring to assist them in their endeavours in this regard;

Desiring therefore to elaborate rules for the application of the provisions of the General Agreement which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b)[*];

---

[*] In this decision, reference to Article XX(b) includes also the chapeau of that Article.

Decide as follows:

1. This decision applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this decision.

2. For the purposes of this decision, the definitions provided in Annex A shall apply.

3. The annexes are an integral part of this decision.

Basic Rights and Obligations

4. Contracting parties have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health [within their territories], [including, when appropriate, measures more stringent than required by international standards, guidelines or recommendations,] provided that such measures are not inconsistent with the provisions of this decision.

5. Contracting parties shall ensure that sanitary and phytosanitary measures are applied only to the extent necessary to protect human, animal or plant life or health, are based on scientific principles and are not maintained against available scientific evidence.

6. Contracting parties shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between contracting parties where identical or similar conditions prevail, including between their own territory [or parts thereof] and other contracting parties. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

7. Sanitary or phytosanitary measures which conform to the relevant provisions of this decision shall be presumed to be in accordance with the obligations of the contracting parties under the provisions of the General Agreement which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Harmonization

8. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, contracting parties shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this decision.

9. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this decision and of the General Agreement.

10. Alternative 1:

[Contracting parties may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of protection a contracting party determines to be appropriate in accordance with paragraph 19. Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not otherwise be inconsistent with the provisions of this decision.]

Alternative 2:

[Contracting parties shall not introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standard, guideline or recommendation, where such exist, without reasonable scientific justification.]

11. Contracting parties shall play a full part within the limits of their resources in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and in the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

12. The Committee on Sanitary and Phytosanitary Measures shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Equivalence

13. Contracting parties shall accept the sanitary or phytosanitary measures of other contracting parties as equivalent, even if these measures differ from their own or from those used by other contracting parties trading in the same commodity, if the exporting contracting party objectively demonstrates to the importing contracting party that its measures achieve the importing contracting party's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing contracting party for inspection, testing and other relevant procedures.

14. Contracting parties shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

15. Contracting parties shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

16. In the assessment of risks, contracting parties shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; ecological [and environmental] conditions; and quarantine or other treatment.

17. In assessing the risk and determining the appropriate level of sanitary or phytosanitary protection, contracting parties shall take into account as relevant economic factors the potential damage in terms of loss of production or sales in the event of the establishment or spread of a pest or disease, the costs of control or eradication in the importing contracting party, and the relative cost effectiveness of alternative approaches to limiting risks.

18. Alternative 1:

[Contracting parties shall, in the determination of the appropriate level of sanitary or phytosanitary protection, take into account the desirability of maximizing trade opportunities while ensuring the legitimate and necessary protection of human, animal or plant life or health.]

Alternative 2:

[In cases of dispute settlement, the impact on the production or sales of an exporting contracting party because of the adoption of sanitary or phytosanitary measures more stringent than necessary according to verifiable scientific evidence, or relevant economic considerations, or an acceptable level of risk, should also be taken into account.]

19. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary and phytosanitary protection against risks to human life or health, or to animal and plant life or health, each contracting party shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.

20. Contracting parties shall co-operate in the Committee on Sanitary and Phytosanitary Measures in accordance with paragraphs 40 and 41 of this decision, to develop guidelines to further the practical implementation of this provision. In developing the guidelines the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

21. Without prejudice to paragraph 9, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, contracting parties shall ensure that such measures are the least restrictive to trade, taking into account technical and economic feasibility [, and other economic considerations and genuine consumer concerns].

22. In cases where relevant scientific evidence is insufficient, a contracting party may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other contracting parties. In such circumstances, contracting parties shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

23. When a contracting party has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another contracting party is constraining or has the potential to constrain its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the contracting party maintaining the measure.

Adaptation to Regional Conditions, including Disease-Free Areas and Areas of Low Pest or Disease Prevalence

24. Contracting parties shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether a country, part of a country, or areas of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, contracting parties shall take into account, inter alia, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

Alternative 3:

[Contracting parties shall ensure that systems for approval of the use of food additives or tolerances for contaminants in food, feedstuffs, or beverages: (a) are based on sound scientific principles; (b) are operated in a manner that is transparent (as provided in Annex B) and non-discriminatory (as provided in Annex C); and (c) result in timely approval decisions (as provided in Annex C). Notwithstanding any other provision of this decision, a contracting party operating such a system may prohibit or restrict access to its domestic markets for imported products, based on the absence of an approval required by the importing contracting party. However, a contracting party shall not impose such prohibition or restriction based solely on the absence of an approval if: (a) there is an applicable international standard adopted after [the entry into force of this decision]; (b) the product conforms to the applicable international standard; and (c) at least nine months have elapsed since: (i) the relevant international standard was adopted; (ii) the data considered in developing the standard were provided to the contracting parties by the Committee on Sanitary and Phytosanitary Measures; and (iii) a complete application for the required approval has been submitted.]

Alternative 4:

[A contracting party operating any procedure for approval of food additives or tolerances for contaminants in food, feedstuffs or beverages, may not prohibit or restrict the access of imported products to its markets because its approval procedure has not been completed, unless it operates that procedure in a manner consistent with the disciplines outlined in this agreement. However, when a relevant international standard exists, the importing contracting party shall not prohibit or restrict access for products that conform to that standard for longer than 4 months after receiving an application for approval, unless during that time the importing contracting party introduces a standard that differs from the applicable international standard in accordance with paragraph 10.]

Technical Assistance

30. Contracting parties agree to facilitate the provision of technical assistance to other contracting parties, especially developing contracting parties, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

25. Contracting parties shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

26. Exporting contracting parties claiming that areas within their territories are pest- or disease-free or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing contracting party that such areas are, and are likely to remain, pest- or disease-free or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing contracting party for inspection, testing and other relevant procedures.

Transparency

27. Contracting parties shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

Control, Inspection and Approval Procedures

28. Contracting parties shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this decision.

29. Alternative 1:

[ ] - no provisions necessary.

Alternative 2:

[Contracting parties shall ensure that systems for approval of the use of food additives or tolerances for contaminants in food, feedstuffs, or beverages: (a) are based on sound scientific principles; (b) are operated in a manner that is transparent (as provided in Annex B) and non-discriminatory (as provided in Annex C); and (c) result in timely approval decisions (as provided in Annex C). Notwithstanding any other provision of this decision, a contracting party operating such a system may prohibit or restrict access to its domestic markets for imported products, based on the absence of an approval required by the importing contracting party.]

31. Where substantial investments are required in order for an exporting developing contracting party to fulfil the sanitary or phytosanitary requirements of an importing contracting party, the latter shall consider providing such technical assistance as will permit the developing contracting party to maintain and expand its market access opportunities for the product involved.

Special and Differential Treatment

32. In the preparation and application of sanitary or phytosanitary measures, contracting parties shall take account of the special needs of developing contracting parties, and in particular of the least-developed ones.

33. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing contracting parties so as to maintain opportunities for their exports.

34. With a view to ensuring that developing contracting parties are able to comply with the provisions of this decision, the Committee on Sanitary and Phytosanitary Measures is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this decision, taking into account their financial, trade and development needs.

35. Contracting parties should encourage and facilitate the active participation of developing countries in the relevant international organizations.

Consultations and Dispute Settlement

[Note: Depending on the form of this agreement, it may be necessary to make specific provisions with respect to dispute settlement. If the agreement takes the form of a Decision by CONTRACTING PARTIES, the following provisions would be appropriate.

36. This decision shall be subject to the provisions of Articles XXII and XXIII and the dispute settlement procedures applicable to those articles as adopted by the CONTRACTING PARTIES.

37. In a dispute under this decision involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.]

38. Nothing in this decision shall impair the rights of contracting parties under other international agreements, including the rights to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

39. In cases where a developing contracting party is involved in dispute settlement on sanitary or phytosanitary issues, the GATT Secretariat shall facilitate the provision of technical and legal advice and information to it.

Administration

40. A Committee on Sanitary and Phytosanitary Measures shall be established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this decision and the furtherance of its objectives, in particular with respect to harmonization. To this end, the Committee shall encourage the use of international standards, guidelines or recommendations by all contracting parties. It shall also encourage and facilitate ad hoc consultations or negotiations among its members on specific sanitary or phytosanitary issues. The Committee shall reach its decisions by consensus.

41. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this decision and in order to ensure that unnecessary duplication of effort is avoided.

42. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. [For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by contracting parties of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a contracting party does not apply an international standard, guideline or recommendation as a condition for import, the contracting party should provide an indication of the reason thereof, and, in particular, if it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection.]

43. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the existing procedures, particularly for notification, which are in operation in the relevant international organizations.

44. [If a contracting party revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the GATT as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.]

45. The Committee may, on the basis of an initiative from one of the contracting parties, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, [including the basis of explanations for non-use given according to paragraph 44 above].

Implementation

46. [Contracting parties shall ensure that governmental authorities within their territories comply with the relevant provisions of this decision.] [Contracting parties shall ensure the observance of the provisions of this decision by the regional and local governments and authorities within its territory in accordance with Article XXIV:12 of the General Agreement.] Contracting parties shall also take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this decision. In addition, contracting parties shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities to act in a manner inconsistent with the provisions of this decision.

Final Provisions

47. Nothing in this decision shall affect the rights of parties to the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this decision.

48. [With respect to existing mandatory legislation inconsistent with this decision, this decision shall enter into force on [plus 2 years]. With respect to all other sanitary or phytosanitary measures, this decision shall enter into force on [plus 6 months]. Developing contracting parties may delay application of this decision until [plus 2 years] with respect to their sanitary or phytosanitary measures affecting importation or imported products.]

49. [The provisions of the decision shall be reviewed and revised as appropriate 5 years after its entry into force.]

ANNEX A

Definitions[*]

For the purposes of this decision, the following definitions shall apply:

1. Sanitary or phytosanitary measure - Any measure applied:

- to protect animal or plant life or health within the territory of a contracting party from risks arising from the establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

- to protect human or animal life or health within the territory of a contracting party from risks arising from additives, contaminants, toxins or disease-causing organisms, in foods, beverages or feedstuffs;

- to protect human life or health within the territory of a contracting party from risks arising from diseases carried by animals, plants or products thereof or from the establishment or spread of pests; or

- to prevent or limit other damage within the territory of a contracting party arising from the establishment or spread of pests;

NOTE: Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processing and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; packaging and labelling requirements directly related to food safety; [measures for the protection of animal welfare and of the environment, as well as of consumer interests and concerns]. Requirements concerning quality, composition, grading, [consumer preferences, consumer information, animal welfare, the environment or ethical and moral considerations] are not included in the definition of sanitary or phytosanitary measures.

---

[*] For the purpose of these definitions "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticide and veterinary drug residues and extraneous matter.

2. Harmonization - The establishment, recognition and application of common sanitary and phytosanitary measures by different contracting parties.

3. International standards, guidelines and recommendations

- for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;
- for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;
- for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in co-operation with regional organizations operating within the framework of the International Plant Protection Convention;

and, for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all contracting parties, as identified by the Committee on Sanitary and Phytosanitary Measures.

4. Risk assessment - The evaluation of the likelihood of establishment or spread of pests or diseases [within the territory of the importing contracting party and the relevant potential biological and economic consequences,] [and the relevant potential biological, environmental and economic consequences,] or the evaluation of the potential adverse effects on human or animal health arising from additives, contaminants, toxins or disease-causing organisms in foods, feedstuffs and beverages.

5. Appropriate Level of Sanitary or Phytosanitary Protection - The level of protection deemed appropriate by the contracting party establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory. (Note: Many parties otherwise refer to this concept as the 'acceptable level of risk'.)

6. Pest-or Disease-Free Area - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.

NOTE: A pest- or disease-free area may surround, be surrounded by, or be adjacent to an area - whether within part of a country or in a geographic region which includes parts of or all of several countries - in which a specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

7. Area of low pest or disease prevalence - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels and which are subject to effective surveillance, control or eradication measures.

ANNEX B

Transparency of Sanitary and Phytosanitary Regulations

1. Publication of regulations

1.1 Contracting parties shall ensure that all sanitary and phytosanitary regulations* which have been adopted are published promptly in such a manner as to enable interested contracting parties to become acquainted with them.

1.2 Except in urgent circumstances, contracting parties shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting countries, and particularly in developing countries, to adapt their products and methods of production to the requirements of the importing country.

2. Enquiry points

2.1 Each contracting party shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested contracting parties as well as for the provision of relevant documents regarding:

(a) any sanitary or phytosanitary regulations adopted or proposed within its territory;

(b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;

(c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary and phytosanitary protection;

(d) the membership and participation of the contracting party, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this decision, and copies of the texts of such agreements and arrangements.

2.2 Contracting parties shall ensure that where copies of documents are requested by interested contracting parties, they are supplied at the same price (if any), apart from the real cost of delivery, as to the nationals of the contracting party concerned.

---

*Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally.

3. Notification procedures

3.1 Whenever an international standard, recommendation or guideline does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, recommendation or guideline, and if the regulation may have a significant effect on trade of other contracting parties, contracting parties shall:

(a) publish a notice at an early stage, in such a manner as to enable interested contracting parties to become acquainted with the proposal to introduce a particular regulation;

(b) notify other contracting parties, through the GATT Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;

(c) provide upon request to other contracting parties copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, recommendations or guidelines;

(d) without discrimination, allow reasonable time for other contracting parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

3.2 However, where urgent problems of health protection arise or threaten to arise for a contracting party, that contracting party may omit such of the steps enumerated in paragraph 3.1 of this Annex as it finds necessary, provided that the contracting party:

(a) immediately notify other contracting parties, through the GATT Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);

(b) provide upon request to other contracting parties copies of the regulation;

(c) allow other contracting parties to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

3.3 Notifications to the GATT Secretariat shall be either in English, French or Spanish.

3.4 Developed contracting parties shall, if requested by other contracting parties, provide copies of the documents or, in case of voluminous documents, summaries of the documents covered by a specific notification in either English, French or Spanish.

3.5 The GATT Secretariat shall promptly circulate copies of the notifications to all contracting parties and interested international organizations and draw the attention of developing contracting parties to any notifications relating to products of particular interest to them.

3.6 Contracting parties shall designate one single central government authority as responsible for the implementation, on the national level, of the provisions concerning notification procedures according to paragraphs 3.1, 3.2, 3.3 and 3.4 of this Annex.

4. General reservations

4.1 Nothing in this decision shall be construed as requiring:

(a) the provision of particulars or copies of drafts or the publication of texts other than in the language of the contracting party except as stated in paragraph 3.4 of this Annex; or

(b) contracting parties to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

ANNEX C

Control, Inspection and Approval Procedures*

1. Contracting parties shall ensure, with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, that:

(a) such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;

(b) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body as soon as possible transmits the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and that upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(c) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances;

(d) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;

(e) any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;

(f) any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other country and should be no higher than the actual cost of the service;

---

*Control, inspection and approval procedures include, inter alia, procedures for sampling, testing and certification.

(g) the same criteria should be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;

(h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned;

(i) a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.

2. Where a sanitary or phytosanitary measure specifies control at the level of production, the contracting party in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.

3. Nothing in this decision shall prevent contracting parties from carrying out reasonable inspection within their own territories.

AGREEMENT ON SAFEGUARDS

Commentary

The main questions requiring an answer include:

Should selective exceptions to the normal application of Article XIX be permitted in exceptional circumstances and subject to specific conditions or should it be confirmed that Article XIX action can only be taken on an m.f.n. basis? (Paragraphs 5, [8] and [10a].)

Should incentives be provided for governments to act within the rules of Article XIX e.g. by waiving retaliation in specific circumstances, and, if so, what are those circumstances? (Paragraph 19.)

Should 'grey-area' measures be phased out or brought into conformity with this agreement? (Paragraph 24.) If so, what are the conditions and time-tables for such actions? (Paragraph 25.)

Should adjustment assistance measures be adopted as a form of safeguard measure? (Paragraphs 15 and 16.) Put in another way, should Safeguards provisions provide for an exemption from GATT disciplines governing subsidies if these subsidies are for structural adjustment purposes?

What room is there for special and differential treatment for developing and least-developed countries in this area? (Paragraphs 20, 21 and 22.)

What time periods should be included in paragraphs 9, 11, 13, or 23?

What should be the obligations of a customs union in relation to safeguard actions? (Footnote 1 to paragraph 2).

AGREEMENT ON SAFEGUARDS[1]

PREAMBLE

The CONTRACTING PARTIES:

Having in mind the overall objective of the contracting parties to improve and strengthen the international trading system based on the General Agreement on Tariffs and Trade;

Recognizing the need to clarify and reinforce the disciplines of the General Agreement, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all contracting parties and based on the basic principles of the General Agreement, is called for;

Hereby agree as follows:

---

[1] Specific drafting amendments proposed by delegations at the last meeting of the Negotiating Group on Safeguards are contained in the Annex of MTN.GNG/NG9/21.

I

GENERAL

1. This agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of the General Agreement.

II

CONDITIONS

2. A contracting party[1] may apply a safeguard measure to a product only if the importing contracting party has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

3. (a) A contracting party may apply a safeguard measure only following an investigation by the competent authorities of the importing contracting party pursuant to procedures previously established and made public in consonance with Article X of the General Agreement. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

---

[1] A customs union may apply a safeguard measure as a single unit or on behalf of a member state. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this agreement shall be based on the conditions existing in the customs union as a whole. When a safeguard measure is applied on behalf of a member state, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member state and the measure shall be limited to that member state. It is understood that when a safeguard measure is applied by a customs union on behalf of a member state, [any injury attributable to competition from producers established in other member states in the customs union shall not be attributed to increased imports, in conformity with the provisions of sub-paragraph 7(b)] [such a measure shall be applied to imports from other member states of the customs union].

(b) Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof and, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities would be free to disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

4. In critical circumstances where delay would cause damage which it would be difficult to repair, a provisional safeguard measure may be taken pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of this Section and Section VIII shall be met. Such measures should take the form of tariff increases. They shall be promptly refunded if the subsequent investigation referred to in paragraph 7 below does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall count towards the initial period and any extension referred to in paragraphs 9, 10 and 11 below.

5. Safeguard measures shall be applied to a product being imported irrespective of its source[, subject to the provisions of paragraphs 20 and 21 below]. [In exceptional circumstances, an importing country may apply a safeguard measure selectively against imports from a limited number of sources. Such exceptional circumstances exist only if the competent authorities in the importing country have determined that (a) serious injury was primarily due to a sharp and substantial increase from a limited number of countries, and (b) these imports account for a significant proportion of total imports. Selective measures shall not be applied to imports from suppliers that represent less than a minimum share (x%) of total imports.]

6. For the purposes of this agreement:

(a) serious injury shall be understood to mean a significant overall impairment in the position of a domestic industry;

(b) a domestic industry shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a contracting party, or those whose collective output of the like or directly competitive products constitutes a major proportion [, i.e. normally 50 per cent or more but in no case less than 33 per cent,] of the total domestic production of those products; and

(c) threat of serious injury shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 7 below. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

7. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(b) The determination referred to in sub-paragraph 7(a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

(c) The competent authorities shall publish promptly, in accordance with the provisions of paragraph 3 above, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

8. Safeguard measures shall be applied only to the extent as may be necessary to prevent or remedy serious injury and to facilitate adjustment. They should take the form of tariff increases [or adjustment assistance measures], but may also take the form of quantitative restrictions. No quantitative restriction shall reduce the quantity of imports below the level of a recent representative period which shall normally be the average of imports in the last three representative years for which statistics are available.

[8. Contracting parties shall apply safeguard measures only to the extent as may be necessary to prevent or remedy serious injury and to facilitate adjustment. Preference should be given to the application of tariff increases. When quantitative restrictions are applied, these shall not have the effect of reducing the total quantity of imports below the level of the most recent three years' average preceding the initiation of an investigation into injury for which data are available, provided that this is sufficient to remedy injury. In cases in which a quota is allocated among supplying countries, and in the absence of agreement with the suppliers concerned, the importing contracting party may allot quota shares proportionately to the quantities supplied during the previous representative period, subject to the possibility of taking into account to what extent the single suppliers have contributed to the assessed global injury, provided that any reduction in individual quota allotments necessary to remedy injury may not exceed (x) percentage points of the proportion supplied during the representative period. When a safeguard measure takes a form different to a quantitative restriction, the authorities of the importing contracting party shall examine all relevant factors (e.g. prices, price elasticity, market share) so as to seek to ensure that, to the extent feasible, the effect of the measure does not result in a cutback of imports to a level below the above representative period, provided this is sufficient to remedy injury. Whenever a safeguard measure has the effect of reducing imports at a level below the representative period, the importing contracting party shall provide justification as to the reasons why such a reduction is necessary to remedy injury.]

9. Safeguard measures shall be applied only for a period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. It shall not exceed [three] [five] years, unless this is extended under paragraph 10 below.

10. The period mentioned in paragraph 9 above may be extended provided that the competent authorities of the importing contracting party have determined, in conformity with the procedures set out in this Section, that: the safeguard measure continues to be necessary to prevent or remedy serious injury; that there is evidence that the industry is adjusting; and that the pertinent provisions of Sections IV and VIII below are observed.

[10a. Safeguard measures limited to specific sources may not exceed a maximum duration of three years. If, at any time during the period of application of such measures, it appears that products being imported from non-restrained suppliers are increasing significantly, a safeguard measure may be applied to all sources of imports. In cases in which the extension of safeguard measures is justified under the provisions of paragraph 10, a safeguard measure shall be made applicable to all sources of imports.]

11. The total period of a safeguard measure including the period of application of any provisional measure, the period of initial application, and any extension thereof shall not exceed [five] [eight] years.

12. In order to facilitate adjustment, if the expected duration of a safeguard measure as notified under the provisions of paragraph 27 is over [one] [two] year[s], it shall be progressively liberalized at regular intervals during the period of application. If the duration of the measure exceeds three years, the contracting party applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 10 above shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

13. After the date of entry into force of this agreement, no safeguard measure shall be applied again to the import of a product which has been subject to such a measure for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least [two] years.

14. Notwithstanding the provisions of paragraph 13 above, no safeguard measure with a duration of 180 days or less may be applied again to the import of a product unless:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

III

ADJUSTMENT

[15. Upon a finding of serious injury in conformity with the relevant provisions of Section II of this agreement, a contracting party may adopt, as an alternative to a border measure, adjustment assistance measures in order to support adjustment by firms or workers. Any adjustment assistance measures adopted on such a basis shall be in conformity with the provisions of paragraphs 8 to 13 of this agreement.]

[16. Adjustment assistance measures shall not take the form of export subsidies.]

IV

LEVEL OF CONCESSIONS AND OTHER OBLIGATIONS

17. A contracting party proposing to apply a safeguard measure or seeking an extension shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing between it and the exporting contracting parties which would be affected by such a measure under the General Agreement, in accordance with the provisions of paragraph 29 below. To achieve this objective, the contracting parties concerned may agree on any means of trade compensation for the adverse effects of the measure on their trade.

18. If no agreement is reached within 30 days in the consultations under paragraph 29 below, then the affected exporting contracting parties are free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the CONTRACTING PARTIES, the application of substantially equivalent concessions or other obligations under the General Agreement, to the trade of the contracting party applying the safeguard measure, the suspension of which the CONTRACTING PARTIES do not disapprove.

19. The right of suspension referred to in paragraph 18 above shall not be exercised if the duration of the measure does not exceed three years, provided such a measure conforms to this agreement.

V

DEVELOPING COUNTRIES

[20. Safeguard measures shall not be applied to exports of the least-developed contracting parties irrespective of whether these countries, individually or collectively, are principal suppliers or not.]

[21. Safeguard measures shall not be applied against a product originating in a less-developed contracting party whose market share in the product concerned does not exceed one per cent, or the share of the product under consideration in the total exports of the less-developed contracting party concerned, in a recent representative period, is more than (x) per cent.]

[22. Less-developed and least-developed contracting parties shall have the flexibility in the conditions defined by the provisions of this agreement to apply safeguard measures which their individual development, financial or trade situation requires, especially as regards the duration or extension of safeguard measures (in paragraphs 9, 10 and 11) or the reapplication of safeguard measures (paragraphs 13 and 14). The provisions of paragraphs 17, 18 and 19 do not apply to these contracting parties.]

VI

EXISTING ARTICLE XIX MEASURES

23. Contracting parties shall terminate all existing safeguard measures taken pursuant to Article XIX of the General Agreement not later than [eight] years after the date on which they were first applied or [five] years after the date of entry into force of this agreement, whichever comes later.

VII

PROHIBITION AND ELIMINATION OF CERTAIN MEASURES

[24. No trade-restrictive measure shall be sought or taken by a contracting party unless it conforms with the provisions of Article XIX as interpreted by the provisions of this agreement, or is consistent with other provisions of the General Agreement, or protocols and agreements or arrangements concluded within the framework of the General Agreement. These include actions taken by a single contracting party as well as actions under agreements, arrangements and understandings entered into by two or more contracting parties. Any such measure in effect at the time of entry into force of this agreement shall either be brought into conformity with the provisions of Article XIX and this agreement or phased out in accordance with paragraph 25 below.]

[25. The provisions of paragraph 24 above shall be carried out according to timetables to be presented to the Safeguards Committee by the contracting parties concerned not later than 180 days after the date of entry into force of this agreement. These timetables shall provide for all measures referred to in paragraph 24 above to be phased out or brought into conformity with this agreement within a period not exceeding [three] years, after the date of entry into force of this agreement.]

26. Contracting parties shall not encourage nor support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 24 above.

VIII

NOTIFICATION AND CONSULTATION

27. A contracting party shall immediately notify the CONTRACTING PARTIES upon:

(a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

(b) making a finding of serious injury or threat thereof caused by increased imports; and

(c) taking a decision to apply or extend a safeguard measure.

28. In making the notifications referred to in sub-paragraphs 27(b) and (c) above, the contracting party proposing to apply or extend a safeguard measure shall provide the CONTRACTING PARTIES with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting

shall also be provided. The CONTRACTING PARTIES or the Safeguards Committee may request such additional information as they may consider necessary from the contracting party proposing to apply or extend the measure.

29. A contracting party proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those contracting parties having a substantial interest as exporters of the product concerned, with a view to, inter alia, reviewing the information provided under paragraph 28 above, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 17 above.

30. A contracting party shall make a notification before taking a provisional safeguard measure referred to in paragraph 4 above. Consultations shall be initiated immediately after the measure is taken.

31. The results of the consultations referred to in this Section, as well as the results of mid-term reviews referred to in paragraph 12, any form of compensation referred to in paragraph 17, and proposed suspensions of concessions and other obligations referred to in paragraph 18, shall be notified immediately to the CONTRACTING PARTIES by the contracting parties concerned.

32. Adjustment assistance measures taken by contracting parties under paragraph 15 shall be notified immediately to the CONTRACTING PARTIES.

33. Contracting parties shall notify promptly the CONTRACTING PARTIES of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

34. Contracting parties maintaining measures described in paragraphs 23 and 24 above which exist at the date on which this agreement enters into force shall notify such measures to the CONTRACTING PARTIES, not later than 60 days after the entry into force of this agreement.

35. Any contracting party may notify the CONTRACTING PARTIES of all laws, regulations, administrative procedures and any measure or action dealt with in this agreement that has not been notified by other contracting parties that are required by this agreement to make such notifications.

36. Any contracting party may notify the CONTRACTING PARTIES of any non-governmental measures referred to in paragraph 26 above.

37. All notifications to the CONTRACTING PARTIES referred to in this agreement shall normally be made through the Safeguards Committee.

38. The provisions on notification in this agreement shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

IX

SURVEILLANCE

39. There shall be a Safeguards Committee under the authority of the CONTRACTING PARTIES, which shall be open to the participation of any contracting party indicating its wish to serve on it. The Committee will have the following functions:

(a) to monitor, and report annually to the CONTRACTING PARTIES on, the general implementation of this agreement and make recommendations towards its improvement;

(b) to find, upon request of an affected contracting party, whether or not the procedural requirements of this agreement have been complied with in connection with a safeguard measure, and report its findings to the CONTRACTING PARTIES;

(c) to assist contracting parties, if they so request, in their consultations under the provisions of this agreement;

(d) to examine measures covered by paragraphs 23 and 24, monitor the phase-out of such measures and report as appropriate to the CONTRACTING PARTIES;

(e) to review, at the request of the contracting party taking a safeguard action, whether proposals to suspend concessions or other obligations are 'substantially equivalent', and report as appropriate to the CONTRACTING PARTIES;

(f) to receive and review all notifications provided for in this agreement and report as appropriate to the CONTRACTING PARTIES; and

(g) to perform any other function connected with this agreement that the CONTRACTING PARTIES may determine.

40. To assist the Committee in carrying out its surveillance function, the secretariat shall prepare annually a factual report on the operation of the agreement based on notifications and other reliable information available to it.

X

DISPUTE SETTLEMENT

41. Contracting parties which consider that their rights under this agreement are being nullified or impaired have recourse to the dispute settlement provisions of the General Agreement.

[TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS][1,2]

Commentary

The attached texts contain the results of the negotiations on trade-related aspects of intellectual property rights, including trade in counterfeit goods, as of 22 November 1990. They are put forward by the Chairman on his own responsibility, but have been used by the Negotiating Group as the basis for negotiations. The purpose of this note is to explain the status of the texts and to indicate the main issues on which agreement has still to be reached.

No point in this draft is put forward as having been agreed by all participants. Square brackets have been used to identify specific points on which further negotiation is necessary, but their absence from a particular provision cannot be taken as indicating that there is general agreement on it. Participants are therefore not committed to any provision and a number of participants have in addition made it clear that on certain provisions their positions are reserved pending further consideration in capitals.

The presentation of two draft agreements, the first on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods and the second on Trade in Counterfeit and Pirated Goods, is a reflection of two basically different approaches to the question of the relationship of the eventual results to the GATT. Some participants, whose positions are identified in the draft by the letter A, envisage a single TRIPS agreement encompassing all the areas of negotiation; this agreement would be implemented as an integral part of the General Agreement. Other participants, whose positions are identified by the letter B, envisage two separate agreements, one on Trade in Counterfeit and Pirated Goods, to be implemented in GATT, and the second on standards and principles concerning the availability, scope and use of intellectual property rights. The latter agreement would be implemented in the "relevant international organisation, account being taken of the multidisciplinary and overall aspects of the issues involved". It was agreed in the Mid-Term Review that the institutional aspects of the international implementation of the results of the negotiations on TRIPS would be decided by Ministers pursuant to the final paragraph of the Punta del Este Declaration.

There are thus a number of outstanding issues which can be settled only in the light of the decision on the institutional aspects of the international implementation of the results. These issues include not only

---

[1] Cf. paragraph 1 of the Final Act.

[2] See also Annex III of this document.

that of structure referred to above but also the arrangements for dispute settlement and a number of specific issues concerning final provisions on such matters as acceptance and accession, deposit, withdrawal, non-application and reservations.

Turning to the major outstanding issues on points of substance, there is, in Part I on General Provisions and Basic Principles, a need for further work on Article 4 on Most-Favoured-Nation Treatment, in particular sub-paragraph (d).

In regard to Section I of Part II, concerning Copyright and Related Rights, decisions are needed on the protection of computer programs (Articles 10.1 and 12), rental rights (Articles 11 and 16.4), the rights of performers and broadcasters (Article 16), the term of protection of phonograms (Article 16.5), moral rights (Article 9), limitations and exemptions (Article 13.2) and the definition of "public" (Article 14).

In Section 2 of Part II on Trademarks, there is an outstanding issue concerning special requirements regarding the use of a mark (Article 22). In regard to Section 3 of Part II on Geographical Indications, it should be made clear that there are still considerable differences on Articles 25, 26 and 27. On Industrial Designs (Section 4 of Part II), a decision needs to be taken on the criteria for design protection (Article 28.1).

In the patent area (Section 5 of Part II), basic decisions need to be taken in the complex of issues concerning patentable subject matter and exclusions therefrom (Article 30), the term of protection (Article 36) and non-voluntary licensing and government use (sub-paragraphs (g), (k), (h), (n) and (o) of Article 34 and related provisions of Article 32). Decisions are also needed on non-discrimination as to the place of invention (Article 30.1), rights conferred by process patents (Article 31) and reversal of the burden of proof (Article 37).

In Section 6 of Part II, on Layout-Designs of Integrated Circuits, a decision has to be taken on the appropriateness of some of the so-called "plus elements" to the provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits.

Further basic issues needing to be resolved are the inclusion of provisions on protection of Undisclosed Information (Section 7 of Part II), and the content of the provisions on the Control of Abusive or Anti-Competitive Practices in Contractual Licences (Section 8 of Part II).

In regard to transitional arrangements, including provisions on least-developed countries, decisions have to be taken on the length of transition periods and on the extent of obligations to be assumed during that period. A number of developing countries have also stated that the texts should contain greater recognition of the constraints on their administrative capacity and of their development needs, in the light of the provisions in the Declaration of Punta del Este on differential and more favourable treatment of developing countries.

A number of more technical points, for example those contained in paragraphs 4 and 5 of Article 65 and in Article 73, are still under study and therefore may need further work.

There has not been sufficient time to give consideration to a proposal for the establishment of a dispute prevention system in respect of the transfer of technologies which was put forward earlier this month. It may be that this matter could be tabled in the committee set up to administer the results of these negotiations.

TABLE OF CONTENTS

Agreement on Trade Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods

Part I: General Provisions and Basic Principles

Part II: Standards concerning the Availability, Scope and Use of Intellectual Property Rights

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Lay-out Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Abusive or Anti-Competitive Practices in Contractual Licences

Part III: Enforcement of Intellectual Property Rights

Part IV: Acquisition and ~~Maintenance~~ of Intellectual Property Rights and Related Inter-Partes Procedures

Part V: Dispute Prevention and Settlement

Part VI: Transitional Arrangements

Part VII: Institutional Arrangements; Final Provisions

Annex: Dispute Settlement

Agreement on Trade in Counterfeit and Pirated Goods

AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS

The PARTIES to this Agreement (hereinafter referred to as "PARTIES"),

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognising, to this end, the need for new rules and disciplines concerning:

(a) the applicability of the basic principles of the GATT and of relevant international intellectual property agreements or conventions;

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade related intellectual property rights;

(c) the provision of effective and appropriate means for the enforcement of trade related intellectual property rights, taking into account differences in national legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognising the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognising that intellectual property rights are private rights;

Recognising the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognising also the special needs of the least developed countries in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasising the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between GATT and WIPO as well as other relevant international organisations;

Hereby agree as follows:

PART I: GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 1: Nature and Scope of Obligations

1. PARTIES shall give effect to the provisions of this Agreement.[1] PARTIES may, but shall not be obliged to, implement in their domestic law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. PARTIES shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections ... to ... of Part II.

3. PARTIES shall accord the treatment provided for in this Agreement to the nationals of other PARTIES.[2] In respect of the relevant intellectual property right, the nationals of other PARTIES shall be understood as those natural or legal persons meeting the criteria for eligibility for protection under the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits. Any PARTY availing itself of the possibilities provided in Articles 5.3 or 6.2 of the Rome Convention shall make a notification as foreseen in those provisions to the Committee established under Part VII below.

Article 2: Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, PARTIES shall not depart from the relevant provisions of the Paris Convention (1967).

2. Nothing in this Agreement shall derogate from existing obligations that PARTIES may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3: National Treatment

1. Each PARTY shall accord to the nationals of other PARTIES treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already

---

[1] When a PARTY gives effect to the provisions of this Agreement through participation in an intergovernmental arrangement, it shall take all reasonable measures as may be available to it to ensure consistency between this Agreement and the arrangement.

[2] When the term "national" is used in this Agreement, it shall be deemed, in the case of Hong Kong, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in Hong Kong.

provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits. Any PARTY availing itself of the possibilities provided in Article 6 of the Berne Convention and Article 16.1(a)(iii) or (iv) or Article 16.1(b) of the Rome Convention shall make a notification as foreseen in those provisions to the Committee established under Part VII below.

2. PARTIES may avail themselves of the exceptions permitted under paragraph 1 above in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a PARTY, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

Article 4: Most-Favoured-Nation Treatment

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a PARTY to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other PARTIES. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a PARTY:

(a) deriving from international agreements on judicial assistance and law enforcement of a general nature and not particularly confined to the protection of intellectual property rights;

(b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorising that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of this agreement, provided that such agreements are notified to the Committee established under Part VII below and do not constitute an arbitrary or unjustifiable discrimination against nationals of other PARTIES;

[(d) exceeding the requirements of this Agreement and provided in an international agreement to which the PARTY belongs, provided that such agreement is open for accession by all PARTIES to this Agreement, or provided that such PARTY shall be ready to extend such advantage, favour, privilege or immunity, on terms equivalent to those under the agreement, to the nationals of any other PARTY so requesting and to enter into good faith negotiations to this end.]

Article 5: Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 above do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

Article 6: Exhaustion[1]

Subject to the provisions of Articles 3 and 4 above, nothing in this Agreement imposes any obligation on, or limits the freedom of, PARTIES with respect to the determination of their respective regimes regarding the exhaustion of any intellectual property rights conferred in respect of the use, sale, importation or other distribution of goods once those goods have been put on the market by or with the consent of the right holder.

Article 7: Objectives

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Article 8: Principles

1. Provided that PARTIES do not derogate from the obligations arising under this Agreement, they may, in formulating or amending their national laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development.

2. Appropriate measures, provided that they do not derogate from the obligations arising under this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

---

[1] For the purposes of exhaustion, the European Communities shall be considered a single PARTY.

PART II: STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: COPYRIGHT AND RELATED RIGHTS

Article 9: Relation to Berne Convention

PARTIES shall comply with the substantive provisions [on economic rights] of the Berne Convention (1971). [However, PARTIES shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom].

Article 10: Computer Programs and Compilations of Data

1. Computer programs, whether in source or object code, shall be protected as [literary] works under the Berne Convention (1971). [Such protection shall not extend to ideas, procedures, methods of operation or mathematical concepts.] [This shall not prevent PARTIES from requiring, as a condition of protection of computer programs, compliance with procedures and formalities consistent with the principles of Part IV of this Agreement or from making adjustments to the rights of reproduction and adaptation and to moral rights necessary to permit normal exploitation of a computer program, provided that this does not unreasonably prejudice the legitimate interests of the right holder.]

2. Compilations of data or other material, whether in machine-readable or other form, which by reason of the selection and arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11: Rental Rights

In respect of at least computer programs and cinematographic works, a PARTY shall provide authors and their successors in title the right to authorise or prohibit the commercial rental to the public of originals or copies of their copyright works [, or alternatively the right to obtain an equitable remuneration corresponding to the economic value of such use] [, where circumstances arise by which the commercial rental of originals or copies of copyright works has led to [unauthorised] copying of such works which is materially impairing the exclusive right of reproduction conferred in that PARTY on authors and their successors in title].

Article 12: Term of Protection

Whenever the term of protection of a work, other than a photographic work, a work of applied art [or a computer program], is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorised publication, or, failing such authorised publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

Article 13: Limitations and Exemptions

1. PARTIES shall confine limitations or exemptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

[2. Translation and reproduction licences permitted under the Appendix to the Berne Convention (1971) shall not be granted where the legitimate local needs of a PARTY could be met by voluntary actions of right holders but for obstacles resulting from measures taken by the government of that PARTY.]

[Article 14: Definition of Public

The term "public" shall not be defined in the domestic law of PARTIES in a manner that conflicts with a normal commercial exploitation of a work and unreasonably prejudices the legitimate interests of right holders.]

Article 15: Protection of Works Existing at Time of Entry into Force

The provisions of the Berne Convention (1971) concerning the protection of works existing at the time of entry into force shall apply in respect of the rights secured under that Convention.

Article 16: Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasts

[1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing: the fixation of their unfixed performance; and the reproduction of such fixation. Performers shall also have the possibility of preventing the broadcasting by wireless means and the communication to the public of their live performance.]

2. Producers of phonograms shall enjoy the right to authorise or prohibit the direct or indirect reproduction of their phonograms.

[3. Broadcasting organisations shall have the right to authorise or prohibit the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where PARTIES do not grant such rights to broadcasting organisations, they shall provide right holders in the subject matter of broadcasts with the possibility of preventing the above acts.]

4. The provisions of Article 11 shall apply mutatis mutandis to right holders in phonograms.

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of [50] years computed from the end of the calendar year in which the fixation was made or the performance or broadcast took place. The term of protection granted pursuant to paragraph 3 above shall last for at least [25] years from the end of the calendar year in which the broadcast took place.

6. Any PARTY to this Agreement may, in relation to the rights conferred under paragraphs 1-3 above, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. [However, the provisions of Article 15 of this Section shall also apply mutatis mutandis to the rights of performers and producers of phonograms in phonograms].

SECTION 2: TRADEMARKS

Article 17: Protectable Subject Matter

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, PARTIES may make registrability depend on distinctiveness acquired through use. PARTIES may require, as a condition of registration, that signs be capable of graphical representation.

2. Paragraph 1 above shall not be understood to prevent a PARTY from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. PARTIES may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of 3 years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

5. PARTIES shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition PARTIES may afford an opportunity for the registration of a trademark to be opposed.

Article 18: Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having his consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

2. Article 6*bis* of the Paris Convention shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, account shall be taken of the knowledge of the trademark in the relevant sector of the public [including knowledge in that PARTY obtained as a result of the promotion of the trademark in international trade].

3. Article 6*bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would unfairly indicate a connection between those goods or services and the owner of the registered trademark.

Article 19: Exceptions

PARTIES may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 20: Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 21: Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognised as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognised as use of the trademark for the purpose of maintaining the registration.

Article 22: Other Requirements

[A. The use of a trademark in commerce shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.]

[B. It shall be a matter for national legislation to determine the conditions for the use of a mark.]

Article 23: Licensing and Assignment

PARTIES may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign his trademark with or without the transfer of the business to which the trademark belongs.

SECTION 3: GEOGRAPHICAL INDICATIONS

Article 24: Protection of Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a PARTY, or a region or locality in that territory, where a given quality or other characteristic on which its reputation is based is essentially attributable to its geographical origin.

2. In respect of geographical indications, PARTIES shall provide in their domestic law the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

(b) any use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

3. A PARTY shall, at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that PARTY is of such a nature as to mislead the public as to the true place of origin.

4. The provisions of the preceding paragraphs of this Article shall apply to a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

Article 25: Additional Protection for Geographical Indications for Wines

[1. Each PARTY shall provide in its domestic law the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.]

[2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines shall be refused or invalidated at the request of an interested party with respect to such wines not having this origin.]

3. In the case of homonymous geographical indications [for wine], protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 24 above. Each PARTY shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

Article 26: Exceptions

[1. Where a geographical indication of a PARTY has been used with regard to goods originating outside the territory of that PARTY in good faith and in a widespread and continuous manner by nationals or domiciliaries of another PARTY, including use as a trademark, before the date of application of these provisions in the other PARTY as defined in Article 68 below, nothing in this Agreement shall prevent such continued use of the geographical indication by those nationals or domiciliaries of the said other PARTY.]

[2. A PARTY shall not take action to refuse or invalidate registration of a trademark first applied for or registered:

(a) before the date of application of these provisions in that PARTY as defined in Article 68 below;

(b) before the geographical indication is protected in its country of origin;

on the basis that the trademark is identical with, or similar to, a geographical indication.]

3. No PARTY shall [be required to] apply the provisions of this Article in respect of a geographical indication of any other PARTY with respect to goods for which the relevant indication is identical with the term customary in common language as the common name for such goods [or of the process for their production] in the territory of that PARTY, or where the goods are products of the vine, is the name of a grape variety.

4. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

5. [On the request of a PARTY, each PARTY shall be willing to enter into good faith negotiations aimed at] [The provisions of the preceding paragraphs shall not prevent PARTIES from] concluding bilateral and multilateral agreements concerning the protection under this Section, with a view to increasing the protection for specific geographical indications.

Article 27: Notification of Geographical Indications

In order to facilitate the protection of geographical indications, the Committee shall [examine the establishment of] [establish] a multilateral system of notification and registration of geographical indications eligible for protection in the PARTIES participating in the system.

SECTION 4: INDUSTRIAL DESIGNS

Article 28: Requirements for Protection

1. PARTIES shall provide for the protection of industrial designs which are new [and] [or] original. PARTIES may provide that designs are not new [and] [or] original if they do not significantly differ from known designs or combinations of known design features. PARTIES may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each PARTY shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. PARTIES shall be free to meet this obligation through industrial design law or through copyright.

Article 29: Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. PARTIES may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

[3B. With respect to the obligations of the owner of a protected industrial design, the provisions set forth in paragraph 3(b) of Article 32 below shall apply.]

4. The duration of protection available shall amount to at least ten years.

SECTION 5: PATENTS

Article 30: Patentable Subject Matter

1. Subject to the provisions of paragraphs 2 and 3 below, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.[1] [Patents shall be available without discrimination as to where the inventions were made.]

2. PARTIES may exclude from patentability inventions, the prevention within their territory of the publication or any exploitation of which is necessary: to protect public morality or order, including to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement; or to protect human, animal or plant life or health.

3. PARTIES may also exclude from patentability:

(a) [Diagnostic, therapeutic and] surgical methods for the treatment of humans or animals;

[(b)A Animal varieties [and other animal inventions] and essentially biological processes for the production of animals, other than microbiological processes or the products thereof. PARTIES shall provide for the protection of plant varieties either by patents or by an effective _sui generis_ system or by any combination thereof. This provision shall be reviewed [...] years after the entry into force of this Agreement.]

---

[1] For the purposes of this Article, the terms 'inventive step' and 'capable of industrial application' may be deemed by a PARTY to be synonymous with the terms 'non-obvious' and 'useful' respectively.

[(b)B Plants and animals, including microorganisms, and parts thereof and processes for their production. As regards biotechnological inventions, further limitations should be allowed under national law.]

[(c)B Certain products, and processes for the manufacture of those products, on grounds of public interest, national security, public health or nutrition, including food, chemical and pharmaceutical products and processes for the manufacture of pharmaceutical products.]

[(d)B Inventions relating to nuclear or fissionable material.]

Article 31: Rights Conferred

1. A patent shall confer on its owner the following exclusive rights:

(a) to prevent third parties not having his consent from the acts of: making, using, offering for sale, selling, or importing[1] for these purposes the product which is the subject matter of the patent;

(b) where the subject matter of a patent is a process, to prevent third parties not having his consent from the act of using the process [, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process].

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 32: Conditions and Obligations on Patent Applicants and Owners

1. PARTIES shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

2. PARTIES may require an applicant for a patent to provide information concerning his corresponding foreign applications and grants.

---

[1] This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6 above.

3. PARTIES may provide that a patent owner shall have the following obligations:

(a) To ensure the [working] [exploitation] of the patented invention in order to satisfy the reasonable requirements of the public. [For the purposes of this Agreement the term "working" may be deemed by PARTIES normally to mean manufacture of a patented product or industrial application of a patented process and to exclude importation.]

[(b) In respect of licensing contracts and contracts assigning patents, to refrain from engaging in abusive or anti-competitive practices adversely affecting the transfer of technology.]

4. PARTIES may adopt the measures referred to in Articles 34, 35 and 43 below to remedy the non-fulfilment of the obligations mentioned in paragraph 3 above.

Article 33: Exceptions to Rights Conferred

PARTIES may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Article 34: Other Use Without Authorisation of the Right Holder

Where the law of a PARTY allows for other use[1] of the subject matter of a patent without the authorisation of the right holder, including use by the government or third parties authorised by the government, the following provisions shall be respected:

(a) Each case of such use shall be considered on its individual merits.

(b) Such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorisation from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a PARTY in the case of a national emergency or other circumstances of extreme urgency. In such situations, the right holder shall, nevertheless, be notified as soon as is reasonably practicable.

(c) The scope and duration of such use shall be limited to the purpose for which it was authorised.

---

[1] "Other use" refers to use other than that allowed under Article 33.

(d) Such use shall be non-exclusive.

(e) Such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use.

(f) Any such use shall be authorised predominantly for the supply of the domestic market of the PARTY authorising such use.

(g) Authorisation for such use shall be liable to be terminated when the circumstances which led to it cease to exist and are unlikely to recur, subject to adequate protection of the legitimate interests of the persons so authorised. The competent authority shall have the authority to review, upon request, the continued existence of these circumstances.

(h) The right holder shall be paid [fair and equitable] [adequate] remuneration in the circumstances of each case, taking into account the economic value of the licence.

(i) The legality of any decision relating to the authorisation of such use shall be subject to judicial review or other independent review by a distinct higher authority in that PARTY.

(j) Any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that PARTY.

(k) Laws, regulations and requirements relating to such use may [not] discriminate between fields of technology or activity [in areas of public health, nutrition or environmental protection or where necessary for the purpose of ensuring the availability of a product to the public at the lowest possible price consistent with giving due reward for the research leading to the invention].

(l) PARTIES are not obliged to apply the conditions set forth in sub-paragraphs (b) [and (f)] above where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. Appropriate remuneration may be awarded in such cases.

(m) Where such use is authorised to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

  (i) the invention claimed in the second patent shall involve an important technical advance in relation to the invention claimed in the first patent and, where the invention claimed in the second patent is a process, such process shall be one of considerable economic significance;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and

(iii) the use authorised in respect of the first patent shall be non-assignable except with the assignment of the second patent.

(n) Authorisation by a PARTY of such use on grounds of failure to work or insufficiency of working of the patented product or process shall not be applied for before the expiration of a period of four years from the date of filing of the patent application or three years from the date of grant of the patent, whichever period expires last. Such authorisation shall not be granted [where importation is adequate to supply the local market or] if the right holder can justify failure to work or insufficiency of working by legitimate reasons, including legal, technical or economic reasons.

(o) Notwithstanding the provisions of sub-paragraphs (a) - (k) above, where such use is made for public [non-commercial] purposes by the government or by any third party authorised by the government, PARTIES are not obliged to apply the conditions set forth in sub-paragraphs [...] above in such cases. [Where it comes to the knowledge of the government that a patent is being exploited under the provisions of this sub-paragraph, the government shall ensure that the patent owner is informed and is [fairly and equitably] [adequately] compensated.]

Article 35 Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 36: Term of Protection

[1A. The term of protection available shall not end before the expiration of a period of 20 years counted from the filing date[1].]

[1B. It shall be a matter for national legislation to determine the term of protection.]

Article 37: Reversal of Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in Article 31.1(b), if the subject matter of a patent is a process for obtaining a product, PARTIES [shall] [may] provide in at least one of the following circumstances that any

---

[1] It is understood that those PARTIES which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

identical product when produced by any party not having the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

Article 38: Relation to Washington Treaty

PARTIES agree to provide protection to the layout-designs (topographies) of integrated circuits (hereinafter referred to as "layout-designs") in accordance with the substantive provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on 26 May 1989 and, in addition, to comply with the following provisions.

Article 39: Scope of the Protection

Subject to the provisions of Article 40.1 below, PARTIES shall consider unlawful the following acts if performed without the authorisation of the holder of the right: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated [, or an article incorporating such an integrated circuit. Rights extend to an article incorporating an integrated circuit only insofar as it continues to contain an unlawfully reproduced layout-design.]

Article 40: Acts not Requiring the Authorisation of the Holder of the Right

1. Notwithstanding Article 39 above, no PARTY shall be obliged to consider unlawful the performance of any of the acts referred to in that paragraph in respect of an integrated circuit incorporating an unlawfully reproduced layout-design [or any article incorporating such an integrated circuit] where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit [or article incorporating such an integrated circuit], that it incorporated an unlawfully reproduced layout-design. [PARTIES shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the holder of the right a sum equivalent to a reasonable royalty in a freely negotiated licence in respect of the layout-design.]

2. The conditions set out in sub-paragraphs (a) - (l) and (o) of Article 34 above shall apply mutatis mutandis in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorisation of the right holder.

Article 41: Term of Protection

1. In PARTIES requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In PARTIES not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2 above, a PARTY may provide that protection shall lapse 15 years after the creation of the layout-design.

[SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 42

1A. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), PARTIES shall protect undisclosed information in accordance with paragraphs 2 and 3 below and data submitted to governments or governmental agencies in accordance with paragraph 4 below.

2A. PARTIES shall provide in their domestic law the legal means for natural and legal persons to prevent information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[1] so long as such information:

- is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- has commercial value because it is secret; and
- has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

---

[1] For the purpose of this provision, "a manner contrary to honest commercial practices" shall [include] [mean] practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

3A. PARTIES shall not discourage or impede voluntary licensing of undisclosed information by imposing excessive or discriminatory conditions on such licences or conditions which dilute the value of such information.

4A. PARTIES, when requiring, as a condition of approving the marketing of new pharmaceutical products or of a new agricultural chemical product, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall [protect such data against unfair commercial use. Unless the person submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable time, generally no less than five years, commensurate with the efforts involved in the origination of the data, their nature, and the expenditure involved in their preparation. In addition, PARTIES shall] protect such data against disclosure, except where necessary to protect the public.]

[SECTION 8: CONTROL OF ABUSIVE OR ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 43

1. PARTIES agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2B. PARTIES may specify in their national legislation licensing practices or conditions that may be deemed to constitute an abuse of intellectual property rights or to have an adverse effect on competition in the relevant market, and may adopt appropriate measures to prevent or control such practices and conditions, including non-voluntary licensing in accordance with the provisions of Article 34 and the annulment of the contract or of those clauses of the contract deemed contrary to the laws and regulations governing competition and/or transfer of technology. The following practices and conditions may be subject to such measures where they are deemed to be abusive or anti-competitive: (i) grant-back provisions; (ii) challenges to validity; (iii) exclusive dealing; (iv) restrictions on research; (v) restrictions on use of personnel; (vi) price fixing; (vii) restrictions on adaptations; (viii) exclusive sales or representation agreements; (ix) tying arrangements; (x) export restrictions; (xi) patent pooling or cross-licensing agreements and other arrangements; (xii) restrictions on publicity; (xiii) payments and other obligations after expiration of industrial property rights; (xiv) restrictions after expiration of an arrangement.

3B. Each PARTY shall enter, upon request, into consultations with any other PARTY which has cause to believe that an intellectual property right owner that is a national or domiciliary of the PARTY to which the request for consultations has been addressed is undertaking practices in violation of the requesting PARTY's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislations, without prejudice to any action under the law and to the full freedom of an ultimate decision of either PARTY. The PARTY addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting PARTY, and shall co-operate through the supply of available information of relevance to the matter in question, subject to and dependent upon the assurances of confidentiality given by the requesting PARTY unless the party providing the information agrees to its disclosure or disclosure is compelled by law.

4. A PARTY whose nationals or domiciliaries are subject to proceedings in another PARTY concerning alleged violation of that other PARTY's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other PARTY under the same conditions as those foreseen in paragraph 3 above.]

PART III: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SECTION 1: GENERAL OBLIGATIONS

Article 44

1. PARTIES shall ensure that enforcement procedures as specified in this Part are available under their national laws so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the dispute without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a dispute shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in national laws concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of laws in general, nor does it affect the capacity of PARTIES to enforce their laws in general.

SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES

Article 45: Fair and Equitable Procedures

PARTIES shall make available to right holders[1] civil judicial procedures concerning the enforcement of any intellectual property right covered by this agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 46: Evidence of Proof

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a PARTY may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 47: Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after

---

[1] For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

customs clearance of such goods. PARTIES are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorised by a government, without the authorisation of the right holder are complied with, PARTIES may limit the remedies available against such use to payment of remuneration in accordance with sub-paragraph (h) of Article 34 above. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with national law, declaratory judgments and adequate compensation shall be available.

Article 48: Damages

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of his intellectual property right by an infringer who knew or had reasonable grounds to know that he was engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, PARTIES may authorise the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not know or had no reasonable grounds to know that he was engaged in infringing activity.

Article 49: Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

Article 50: Right of Information

PARTIES may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 51: Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, PARTIES shall not exempt public authorities or officials from liability, except for actions taken or intended in good faith in the course of the administration of such laws.

Article 52: Administrative Procedures

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 3: PROVISIONAL MEASURES

Article 53

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right [from occurring], and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures inaudita altera parte where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that his right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted inaudita altera parte, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4 above, provisional measures taken on the basis of paragraphs 1 and 2 above shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where national law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES[1]

Article 54: Suspension of Release by Customs Authorities

PARTIES shall, in conformity with the provisions set out below, adopt procedures[2] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods[3] may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. PARTIES may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. PARTIES may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 55: Application

Any right holder initiating the procedures under Article 54 above shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of his intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognisable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

---

[1] Where a PARTY has dismantled substantially all controls over movement of goods across its border with another PARTY with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[2] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

[3] For the purposes of this Agreement:

- Counterfeit trademark goods shall mean any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

- Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorised by him in the country of production and which are made directly or indirectly from an article where the making of that copy constitutes an infringement of a copyright or a related right under the law of the country of importation.

Article 56: Security or Equivalent Assurance

The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 57: Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 54 above.

Article 58: Duration of Suspension

If, within a period not exceeding ten working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another ten working days. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of Article 53.6 above shall apply.

Article 59: Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 58 above.

Article 60: Right of Inspection and Information

Without prejudice to the protection of confidential information, PARTIES shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any product detained by the customs authorities inspected in order to substantiate his claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such product inspected. Where a positive determination has been made on the merits of a case, PARTIES may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 61: Ex Officio Action

Where PARTIES require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 58 above;

(c) public authorities or officials shall not be exempted by PARTIES from liability, except for actions taken or intended in good faith.

Article 62: Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 49 above. In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 63: De Minimis Imports

PARTIES may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

SECTION 5: CRIMINAL PROCEDURES

Article 64

PARTIES shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. PARTIES may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

PART IV: ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

Article 65

1. PARTIES may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2-6 of Part II of this Agreement, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, PARTIES shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

3. Article 4 of the Paris Convention (1967) shall apply mutatis mutandis to service marks.

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where the national law provides for such procedures, opposition, revocation, cancellation or similar inter partes procedures, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 44.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 above shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

PART V: DISPUTE PREVENTION AND SETTLEMENT

Article 66: Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by any PARTY pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of any PARTY and the government or a governmental agency of any other PARTY shall also be published.

2. PARTIES shall notify the laws and regulations referred to in paragraph 1 above to the Committee established under Part VII below in order to assist that Committee in its review of the operation of this Agreement. The Committee shall attempt to minimise the burden on PARTIES in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Committee if consultations with the World Intellectual Property Organisation on the establishment of a common register containing these laws and regulations are successful.[1] The Committee shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6*ter* of the Paris Convention (1967).

3. Each PARTY shall be prepared to supply, in response to a written request from another PARTY, information of the sort referred to in paragraph 1 above. A PARTY, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1 to 3 above shall require PARTIES to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

---

[1] This provision depends on the decision to be taken regarding the institutional arrangements for the international implementation of this Agreement.

Article 67: Dispute Settlement[1]

PARTIES shall not have recourse in relation to other PARTIES to unilaterally decided economic measures of any kind. Furthermore, they undertake to modify and administer their domestic legislation and related procedures in a manner ensuring the conformity of all measures taken thereunder with the above commitment.

PART VI: TRANSITIONAL ARRANGEMENTS

Article 68: Transitional Arrangements

1. Subject to the provisions of paragraphs 2 and 3 below, PARTIES shall not be obliged to apply the provisions of this Agreement before the expiry of a period of [...] years following the date of entry into force of this Agreement for that PARTY.

2. Any developing country PARTY may delay for a period of [...] years the date of application, as defined under paragraph 1 above, of the provisions of this Agreement, other than Articles 3, 4 and 5 [, insofar as compliance with those provisions requires the amendment of domestic laws, regulations or practice].

3. Any other PARTY which is undertaking structural reform of its intellectual property system and faces special problems in the preparation and implementation of intellectual property laws, may also benefit from a period of delay as foreseen in paragraph 2 above.

4. Any PARTY availing itself of a transitional period under paragraphs 1, 2 or 3 shall ensure that any changes in its domestic laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

5. Any PARTY availing itself of a transitional period in accordance with paragraph 2 or 3 above shall provide, on accession, a schedule setting out its timetable for application of the provisions of this Agreement. [This timetable shall be without commitment.] [The Committee established under Part VII below may authorise, upon duly motivated request, departures, consistent with provisions of paragraph 2 or 3 above, from the timetable.]

Article 69: Least-Developed Countries

1. In view of their special needs and requirements, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, least-developed country PARTIES shall not be required to apply the provisions of this Agreement, other than

---

[1] In regard to dispute settlement procedures, see the Annex to this text.

Articles 3, 4 [and 5, insofar as compliance with those provisions requires the amendment of domestic laws, regulations or practices for a period of [....] years from the date of application as defined under paragraph 1 of Article 68 above. The Committee shall, upon duly motivated request by a least developed country PARTY, accord extensions of this period.] The requirement of paragraph 5 of Article 68 above shall not apply to least developed country PARTIES.

2. Developed country PARTIES shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country PARTIES in order to enable them to create a sound and viable technological base.

Article 70: Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country PARTIES shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country PARTIES. Such cooperation shall include assistance in the preparation of domestic legislation on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII: INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS

Article 71: Committee on Trade Related Intellectual Property Rights

PARTIES shall establish a Committee on Trade Related Intellectual Property Rights composed of representatives from each PARTY. The Committee shall elect its own chairperson, establish its own rules of procedure and shall meet not less than once a year and otherwise upon request of any PARTY. The Committee shall monitor the operation of this agreement and, in particular, PARTIES' compliance with their obligations hereunder, and shall afford PARTIES the opportunity of consulting on matters relating to trade related intellectual property rights. It shall carry out such other responsibilities as assigned to it by the PARTIES, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Committee may consult with and seek information from any source they deem appropriate. In consultation with the World Intellectual Property Organization, the Committee shall seek to establish, within one year of its first meeting, appropriate arrangements for co-operation with bodies of that Organization.[1]

---

[1] This provision depends on the decision to be taken regarding the institutional arrangement for the international implementation of this Agreement.

Article 72: International Cooperation

PARTIES agree to co-operate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their national administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and co-operation between customs authorities with regard to trade in counterfeit goods.

Article 73: Protection of Existing Intellectual Property

1. PARTIES shall apply the provisions of Articles 3, 4 and 5 of Part I, of Sections 2, 3, 7 and 8 of Part II, of Part III and of Part IV to subject matter under protection in a PARTY on the date of application of the provisions of this Agreement for that PARTY as defined in Part VI above.

2. PARTIES are not obliged to apply the provisions of Sections 1, 4, 5 and 6 of Part II to subject matter under protection in a PARTY on the date of application of the provisions of this Agreement for that PARTY, subject to the provisions of Article[s] 15 [and 16.6]. Subject matter in respect of which the procedures for the acquisition of rights have been initiated as of that date for which, however, the intellectual property title has not yet been granted shall [not] benefit from the provisions of this Agreement. Nothing in this Agreement shall affect other subject matter covered by these Sections which is already in existence and not under protection in a PARTY on the date of application of the provisions of this Agreement for that PARTY, subject to the provisions of Article[s] 15 [and 16.6].

3. The application of Articles 2 and 6 of this Agreement to existing intellectual property shall be governed by paragraphs 1 and 2 of this Article, as appropriate to the intellectual property right in question.

Article 74: Review and Amendment

1. PARTIES shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 68 above. They shall, having regard to the experience gained in its implementation, review it [-] years after that date, and at identical intervals thereafter. The PARTIES may undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted by all PARTIES may be adopted by the Committee.

[Article 75: Reservations

A PARTY may only enter reservations in respect of any of the provisions of this Agreement at the time of entry into force of this Agreement for that PARTY and with the consent of the other PARTIES.]

ANNEX

DISPUTE SETTLEMENT

Given that dispute settlement procedures are closely related to the question of the institutional arrangements for the international implementation of this Agreement, which question is specifically left for decision by Ministers when the results of the negotiations are established, and on which there are differing views, no attempt has been made to draft a single text on dispute settlement. Instead the following three texts are reproduced in this Annex in order to indicate the range of options presented and to provide a basis for possible elaboration in the light of the decision to be taken on institutional arrangements. Text I is the text that has figured in recent drafts.

Text I[1]

1. Consultations and settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the authority of the Committee on Trade Related Aspects of Intellectual Property Rights.

2. The procedures for consultations and settlement of disputes shall as far as possible follow, *mutatis mutandis*, those adopted by the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade as a result of the dispute settlement negotiations in the Uruguay Round. Within this overall model, specific provisions relating to disputes under this Agreement shall apply as follows:

(a) If at the end of the period allowed for consultations, the PARTIES to a dispute have not reached agreement, the dispute shall be referred for conciliation, mediation and good offices, under the aegis of the chairman of the Committee on Trade Related Aspects of Intellectual Property Rights.

(b) If the procedure under sub-paragraph (a) above does not lead to a settlement within 30 days, the complaining PARTY may request the establishment of a panel.

(c) In order to ensure the availability of expertise in intellectual property matters, a roster of experts in the field shall be established by the Committee on Trade Related Aspects of Intellectual Property Rights. These experts shall be available to assist in conciliation, mediation and good offices; to serve as panelists; and to provide expert advice to panels.

---

[1] These provisions are without prejudice to decisions to be taken on the international implementation of this Agreement, or on general GATT dispute settlement procedures.

(d) If a PARTY fails to implement the recommendations and rulings of the Committee within the reasonable period of time, the complaining PARTY may:

- request the Committee for authorisation to suspend obligations under this Agreement; or

- request the GATT Council for authorisation to suspend concessions or other obligations under the General Agreement on Tariffs and Trade. If the PARTY that would be subject to such measures objects to the level of suspension proposed, the matter shall be referred to arbitration. Such arbitration shall where possible be carried out be the original panel. The arbitration body shall determine whether the amount of trade covered is appropriate in the circumstances.

Text II

1(a) When any dispute arises, concerning the interpretation or implementation of this Agreement, a PARTY may bring the matter to the attention of another PARTY and request the latter to enter into consultations with it.

(b) The PARTY so requested shall provide promptly an adequate opportunity for the requested consultations.

(c) The PARTIES engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.

2. If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the PARTIES to the dispute may agree to refer to other means designed to lead to an amicable settlement of the dispute, such as good offices, conciliation, mediation and arbitration.

3(a) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Committee shall, at the request of either of the PARTIES to the dispute, convene a panel of three members to examine the matter. The members of the panel shall not, unless the PARTIES to the dispute agree otherwise, be from either PARTY to the dispute. They shall be selected from a list of designated governmental experts established by the Committee. The terms of reference for the panel shall be agreed upon by the PARTIES to the dispute. If such agreement is not achieved within three months, the Committee shall set the terms of reference for the panel after having consulted the PARTIES to the dispute and the members of the panel. The panel shall give full opportunity to the parties to the dispute and any other interested PARTY to present to it their views. If both PARTIES to the dispute so request, the panel shall stop its proceedings.

(b) The Committee shall adopt rules for the establishment of the said list of experts and the manner of selecting the members of the panel, who shall be governmental experts of the PARTIES, and for the conduct of panel proceedings, including provisions to safeguard the confidentiality of the proceedings and of any material designated as confidential by any participant in the proceedings.

(c) Unless the PARTIES to the dispute reach an agreement between themselves prior to the panel concluding its proceedings, the panel shall promptly prepare a report and provide it to the PARTIES to the dispute for their review. The PARTIES to the dispute shall have a reasonable period of time, whose length will be fixed by the panel, to submit any comments on the report of the panel, unless they agree to a longer time-frame in their attempts to reach a mutually satisfactory resolution to their dispute. The panel shall take into account such comments and shall promptly transmit its report to the Committee. The report shall contain the facts and recommendations for the resolution of the dispute, and shall be accompanied by the written comments, if any, of the PARTIES to the dispute.

4. The Committee shall give the report of the panel prompt consideration. The Committee shall by consensus, make recommendations to the PARTIES to the dispute, based upon its interpretation of this Agreement and the report of the panel. The Committee shall, thereafter, monitor the implementation of its recommendations.

Text III

PARTIES agree that, in the area of trade related intellectual property rights covered by this Agreement, they shall, in relation to each other, abide by the dispute settlement rules and procedures adopted by the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade as a result of the dispute settlement negotiations in the Uruguay Round, and abide by the recommendations, rulings and decisions of the CONTRACTING PARTIES.

TRADE IN COUNTERFEIT AND PIRATED GOODS

Preamble

Desirous of providing for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods while ensuring an unimpeded flow of trade in legitimate goods;

Deeming it highly desirable to ensure competition in international trade and to prevent arrangements which may restrain such competition;

Recognising the need to take into consideration the public policy objectives underlying national systems for the protection of intellectual property, including developmental and technological objectives;

Recognising also the special needs of the least developed countries in respect of maximum flexibility in the application of this Agreement in order to enable them to create a sound and viable technological base.

Section 1: Objectives

Article I

1. With respect to intellectual property and international trade, PARTIES agree on the following objectives:

(a) To clarify GATT provisions related to the effects of the enforcement of intellectual property rights on international trade, in particular Articles IX and XX(d), and to provide for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods.

(b) To ensure that such procedures and remedies do not themselves become barriers to legitimate trade and are not applied in a discriminatory manner to imported goods.

(c) To ensure the free flow of goods and prevent arrangements, effected by private or public commercial enterprises, which may result in the division of markets or otherwise restrain competition, thus having harmful effects on international trade.

SECTION 2: GUIDING PRINCIPLES AND NORMS

Article II: Trade in Counterfeit and Pirated Goods[1]

1. PARTIES undertake to discourage trade in counterfeit trademark and pirated copyright goods and to combat such trade without inhibiting the free flow of legitimate trade. For this purpose, they shall adopt in their respective national legislation the necessary measures, procedures and remedies set out in this Section.

2. PARTIES shall exchange information and promote cooperation between customs authorities with respect to trade in counterfeit trademark and pirated copyright goods.

Article III: Safeguard against Creation of Trade Impediments in the Application of Measures and Procedures to Enforce Intellectual Property Rights

In the application of national measures and procedures to enforce intellectual property rights, PARTIES undertake to avoid the creation of impediments or distortions to international trade, and to refrain from applying their national legislation in a discriminatory manner to imports from the territories of other PARTIES. For this purpose, they shall observe the principles of national treatment and MFN enshrined in the GATT.

Article IV: Non-recourse to Unilateral Measures

PARTIES shall refrain, in relation to each other, from threatening or having recourse to unilaterally decided economic measures of any kind aimed at ensuring the enforcement of intellectual property rights.

---

[1] For the purposes of this Agreement:

- Counterfeit trademark goods shall mean any goods, including packaging, bearing without authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

- Pirated copyright goods shall mean any goods which are copies made without the consent of the right holder or person duly authorised by him in the country of production and which are made directly or indirectly from an article where the making of that copy constitutes an infringement of a copyright or a related right under the law of the country of importation.

Article V: Control of Anti-Competitive and Trade Distorting Practices

PARTIES shall co-operate with each other to ensure the free flow of goods and to prevent intellectual property rights being used, through arrangements among enterprises, to create restrictions or distortions to international trade or to engage in anti-competitive practices having adverse effects on their trade. For this purpose, they undertake to exchange information and to agree upon the request of any other PARTY to consult with respect to any such practices and to take such measures in their territory as may be deemed appropriate with a view to eliminating the adverse effects of such practices.

Article VI: Transparency

Laws, regulations, judicial decisions and administrative rulings pertaining to the application of the principles and norms prescribed in Sections 1 and 2 shall be made publicly available in the official language of the PARTY adopting such texts and, shall be provided, upon request, to any other PARTY.

SECTION 3: BORDER MEASURES[1] RELATED TO COUNTERFEIT AND PIRATED GOODS

Article VII: Suspension of Release by Customs Authorities

PARTIES shall, in conformity with the provisions set out below, adopt procedures[2] to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. PARTIES may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. PARTIES may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of such goods destined for exportation from their territories.

---

[1] Where a PARTY has dismantled substantially all controls over movement of goods across its border with another PARTY with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

[2] It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

Article VIII: Application

Any right holder initiating the procedures under Article VII above shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of his intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognisable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

Article IX: Security or Equivalent Assurance

The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article X: Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article VII above.

Article XI: Duration of Suspension

If, within a period not exceeding ten working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another ten working days. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, such provisional measures shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where national law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

Article XII: Indemnification of the Importer and of the Owner of the Goods

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article XI above.

Article XIII: Right of Inspection and Information

Without prejudice to the protection of confidential information, PARTIES shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any product detained by the customs authorities inspected in order to substantiate his claims. The competent authorities shall also have the authority to give the importer an equivalent opportunity to have any such product inspected. Where a positive determination has been made on the merits of a case, PARTIES may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article XIV: Ex Officio Action

1. Where PARTIES require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

(a) The competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;

(b) The importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article XI above.

(c) Public authorities or officials shall not be exempted from liability, except for actions taken or intended in good faith.

Article XV: Remedies

In order to create an effective deterrent to infringement and without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order, that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article XVI: Review

The importer or other persons affected by border measures shall be entitled to judicial review or other independent review by a distinct higher authority of any final decision taken by an administrative authority.

Article XVII: De Minimis Imports

PARTIES may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

TRADE-RELATED ASPECTS OF INVESTMENT MEASURES

Commentary

Negotiations conducted in the relevant Negotiating Group have revealed that basic divergences of view continue to exist in respect of the following points:

1. Coverage

Should an agreement cover measures imposed only when an investment is made, or also measures applied to established firms and industries? Should an agreement cover TRIMs that are enforceable through a government offering or withdrawing advantages, and particularly subsidies, or only TRIMs that are legally enforceable?

2. Level of discipline

Should the adverse trade effects of TRIMs be avoided only on a case-by-case basis through trade remedies, or should they be avoided in certain cases also by prohibition of the TRIM? In that regard, are certain TRIMs (such as those imposing local content requirements) prohibited already by GATT Articles III and XI, and is there need to affirm their prohibition in an agreement?

Should other TRIMs (such as export requirements) be prohibited under new GATT provisions because they could be considered as inherently trade restrictive and distorting in their effects?

3. Developing countries

In the light of the decisions reached on the level of discipline that should apply, what additional flexibility should be provided for developing countries, for example by means of authorisation to maintain TRIMs over a limited period or extended transitional arrangements?

4. Restrictive Business Practices

Should an agreement on TRIMs address the restrictive business practices of private enterprises?

Political decisions are needed to overcome these divergences in view of the fact that neither the draft text of the Chairman of the Negotiating Group, (Ref. No. 2657) dated 26 October 1990, nor a revision of that text, dated 9 November 1990, nor the text prepared by the representative of Hong Kong on behalf of the Chairman of the TNC in consultation with a number of delegations, dated 20 November 1990, have been considered an agreed basis for negotiations.

AGREEMENT ON TEXTILES AND CLOTHING

PREAMBLE

1. Having in mind the overall objectives of bringing about further liberalization and expansion of world trade to the benefit of all countries, especially less-developed contracting parties, of improving and strengthening the multilateral trading system based on the principles and rules of the GATT, and of bringing about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines;

2. Recognizing the great importance of the textile and clothing sector for the economies of many countries and particularly for the economic and social development of many developing countries, and for the expansion of their export earnings;

3. Recognizing also that international trade in textile products[1] is characterized by a number of restrictive practices and measures, and that this trade has been subject, since 1961, to a special set of rules, separate and different from those of the General Agreement, and noting that the current Protocol extending the Arrangement Regarding International Trade in Textiles will expire on 31 July 1991;

4. Recalling that Ministers agreed at Punta del Este that negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade;

5. Recalling also that in the April 1989 TNC Decision it was agreed that the process of integration should commence following the conclusion of the Uruguay Round in 1990, and should be progressive in character. Recalling further that it was agreed that special treatment should be accorded to the least developed countries;

6. Desiring to provide for a multilateral framework, during the transitional period, which would permit the orderly integration of the textiles and clothing sector into GATT;

7. [Acknowledging that as a result of the Uruguay Round negotiations, GATT rules and disciplines have been strengthened, so as to form a basis for the integration process to be launched;]

8. Determined to have full regard to the principles and objectives of the General Agreement on Tariffs and Trade and, in carrying out the aims of the present Agreement, effectively to implement the decisions of Ministers taken at the conclusion of the Uruguay Round;

Parties to this Agreement hereby agree as follows:

---

[1] Throughout this paper the expression "textiles products" refers to "textiles and clothing".

AGREEMENT ON TEXTILES AND CLOTHING[1]

Commentary

When the attached text was submitted, the main points on which a divergence of opinion remained related to those set out below. It was, however, agreed that this text, along with this list of points, would form the basis for further negotiations.

1. Timespan (Article 10) What will be the period of transition for integrating this sector into GATT ?

2. Product Coverage (Annex II) Some participants maintain that certain products should be excluded from this Annex, given their impact on the total volume of trade and thus on the percentage of products to be integrated under Articles 2.4 and 2.6.

3. Integration by Stages (Articles 2.4 and 2.6) The question here is whether the products to be integrated should encompass a percentage of products under restrictions, and include products drawn from the four degrees of processing in Annex IV. Another question relates to the percentage of the products to be integrated at each stage.

4. Base Levels and Growth Rates (Articles 2.9 and 2.10) Should there be an uplift in the base levels and, in addition to the adequacy of the growth rates themselves, should provision be made for a minimum (floor) growth rate.

5. Special Categories of Exporters (Article 6.6) The question here is how to extend meaningful differential treatment to the various categories of suppliers including new entrants.

6. Transitional Safeguards (Article 6) The problems relate mainly to the non-discriminating application of the selective safeguard (6.4); the reference period (6.8); the duration (6.12); and the terms to be provided for growth and flexibility (6.14).

7. Recourse to GATT Article XIX (Article 2.15) Whether provision should be made whereby an emergency action under Article XIX shall not be taken in respect of a product during a period of two years following the date of removal of all quantitative restrictions against that product under the terms of this Agreement.

8. Review Procedure (Article 9.11) The possibility of adjustment of the provisions of this Agreement relating to the process of integration in respect of any party found not to be complying with its obligations under Article 8 of this Agreement, raises problems for a number of participants.

---

[1] A precise date for the entry into force of this Agreement (1 January 1992) has to be agreed in advance in order to deal with the situation arising from the fact that the current Protocol extending the MFA will expire on 31 July 1991.

ARTICLE 1

GENERAL PROVISIONS

1. This Agreement sets out provisions to be applied during a transitional period for the integration of the textiles and clothing sector into GATT. This process of integration shall be effected within a transition period of ... years, beginning on 1 January 1992.

2. Nothing in this Agreement shall prevent a party from eliminating restrictions maintained by it with immediate effect or earlier than specifically provided for in this Agreement.

3. Parties shall not interrupt or discourage autonomous industrial adjustment processes. Policies applied in this context should encourage businesses which are less competitive internationally to move progressively into more viable lines of production or into other sectors of the economy. They should allow for increased competition in the markets of the parties in order to prepare their industry for the integration of the textiles and clothing sector into the GATT.

4. The provisions of this Agreement shall not affect the rights and obligations of the parties under the GATT.

5. For the purpose of this Agreement, the product coverage is set out in [Annex --].

ARTICLE 2

MFA RESTRICTIONS

1. Parties agree that as of 1 January 1992, all quantitative restrictions[1] maintained under the MFA, as extended[2], and in place on 31 December 1991, shall be governed by the provisions of this Agreement.

2. Within 60 days of the commencement of this Agreement, all MFA restrictions in force on 31 December 1991 shall be notified in detail by the parties maintaining such restrictions to the Textiles Monitoring Body (TMB), established under Article 9. The TMB shall promptly circulate these notifications to the other parties for their information. It is open to any party to bring to the attention of the TMB, within 60 days of the circulation of the notifications, any observations it deems appropriate with regard to such notifications.

3. The MFA restrictions thus notified shall be deemed to constitute the totality of such restrictions applied by the respective parties on 31 December 1991, and no new restrictions in terms of products or countries shall be introduced except under the provisions of this Agreement or relevant GATT provisions. MFA restrictions which are not notified within sixty days of the commencement of this Agreement shall be terminated forthwith.

4. On the first day of the coming into force of this Agreement, i.e. 1 January 1992, each party shall integrate into GATT products accounting for not less than [10] per cent of the total volume of imports in 1990 of the products subject to this Agreement (see Annex II), in terms of HS lines or categories. The products to be integrated by the importing parties shall encompass a range of products from the four groups which make up Annex IV of this Agreement.

[AND]

- eliminate restrictions and restrictive practices [listed in] [**as may be agreed with respect to**] **Annex III B and III C, (see Annex III).**

---

[1] [Quantitative restrictions are defined as limits in place under MFA [agreements] in effect on 31 December 1991, i.e., specific [and group and aggregate] limits.]

[2] The legal cover for the restrictions under the MFA as extended by the 1986 Protocol, for the period 1 August 1991 to 31 December 1991, will be provided by means of a decision of the Textiles Committee.

5. Notwithstanding the date of the coming into force of this Agreement, i.e, 1 January 1992, the parties concerned undertake to notify to the GATT Secretariat not later than 1 July 1991, full details of the actions to be taken pursuant to paragraph 4 above. The GATT Secretariat shall promptly circulate the notifications to the other parties for information. These notifications will be made available to the TMB, when established, for the purposes of paragraph 8 below.

6. The remaining products, i.e., the products not integrated into GATT under paragraph 4 above, shall be integrated, in terms of HS lines or categories, in three stages, as follows:

A. On 1 January [....], not less than [15] per cent of the total volume of 1990 imports of products subject to this Agreement (see Annex II). The products to be integrated by the importing parties shall encompass a range of products from the four groups which make up Annex IV of this Agreement.

B. On 1 January [....], not less than [20] per cent of the total volume of 1990 imports of products subject to this Agreement (see Annex II). The products to be integrated by the importing parties shall encompass a range of products from the four groups which make up Annex IV of this Agreement.

C. On 1 January [....], all restrictions under this Agreement would have been eliminated and the textiles and clothing sector stand integrated into GATT.

7. The respective programmes of integration to be adopted by the parties concerned in pursuance of paragraph 6 above shall be notified in detail to the TMB at least 12 months before their coming into effect, for circulation to all parties. Such administrative arrangements as deemed necessary for the integration process may be agreed bilaterally between the parties concerned. Any such arrangements shall also be notified to the TMB for circulation to all parties.

8. The TMB shall, at the request of any party, review any particular matter with reference to the implementation of the provisions of paragraphs 4 and 6 above. It shall make appropriate recommendations or findings within thirty days to the party or parties concerned after inviting the participation of such parties.[1] The TMB shall keep under review the implementation of this Article.

---

[1] For further procedures in relation to the TMB recommendations, see Article 9.

9. The base levels of the restrictions on the remaining products, mentioned in paragraph 6 above, shall be the actual levels of the MFA restrictions in force on 31 December 1991 [uplifted by [ ] per cent].

10. During the life of this Agreement, the levels of restrictions in force, i.e., until such restrictions are eliminated and the products to which they apply integrated into GATT in accordance with the provisions of paragraph 6 above, shall be increased annually by not less than the growth rates established according to the following procedure:

(i) for Stage 1 (years 1992 to [ ] inclusive), each existing growth rate for the respective product categories in MFA bilateral agreements for the year 1991, increased by [16 per cent];

(ii) for Stage 2 (years [ ] to [ ] inclusive), growth rate for the respective product categories during Stage 1, increased by [21 per cent];

(iii) for Stage 3 (years [ ] to [ ] inclusive), growth rate for the respective product categories during Stage 2, increased by [26 per cent];

[provided that all growth rates in existing MFA bilateral agreements lower than 1 per cent shall be increased to 1 per cent before the application of the above growth factors.]

11. Flexibility provisions, i.e., swing, carryover, and carry forward applicable to all quantitative restrictions in force in accordance with the provisions of this Article shall be the same as those provided for in MFA bilateral agreements for the year 1991. No quantitative limits shall be placed on the combined use of swing, carryover and carry forward.

12. Parties to this Agreement may mutually agree to provide for [a different mix of base levels, rates of growth and flexibility, provided that the resulting agreement shall not involve any diminution of the access level in the importing party provided for under this Article].

13. [With respect to suppliers which are substantial producers of cotton whose exports are heavily dependent on textile products made of cotton, the base levels indicated in paragraph 9, above, shall be uplifted so as to ensure meaningful improvement in the access to that importing country, the flexibility provisions ...., and the growth rates indicated in paragraph 10 above shall be increased by ..... per cent for Stage 1, ... per cent for Stage 2, and .... per cent for Stage 3.]

14. With respect to participating countries whose total volume of textile exports is small in comparison with the total volume of exports of other countries, and whose total volume of textile exports into a specific country is one per cent or less of the total volume of imports of textiles of the importing country concerned, the base levels indicated in paragraph 9 above shall be uplifted so as to ensure meaningful improvement

in the access to that importing country, the flexibility provisions ....., and the growth rates indicated in paragraph 10 above shall be increased by ..... per cent for Stage 1, ... per cent for Stage 2, and ..... per cent for Stage 3.

OR

As regards to the parties whose restrictions represent one per cent or less of the total volume of the restrictions notified under paragraph 2 above, meaningful improvement in access shall be provided through growth rates (higher than those in paragraph 10, the precise figures to be developed as a function of the definition of paragraph 10), or as appropriate, in combination with increases in base levels indicated in paragraph 9.

****

15. [An emergency action shall not be taken in respect of a particular product during a period of two years following the date of removal of all quantitative restrictions on that product in accordance with the programme of progressive elimination of restrictions in Article 2.]

ARTICLE 3

OTHER RESTRICTIONS ON TEXTILES AND CLOTHING

1. All restrictions[1] on textiles and clothing products (other than those maintained under the MFA and covered by the provisions of Article 2 above), whether consistent with GATT or not, shall be notified in detail, or notifications with respect to them made available, to the TMB within sixty days of the entry into force of this Agreement, by the parties maintaining such restrictions. The notification should, wherever applicable, provide information with respect to any GATT justification for the restrictions, including the GATT Article on which they are based. The TMB shall circulate the notifications to other parties for their information.

2. Over the period of this Agreement, parties shall notify, for the information of the TMB, any new restrictions or changes in existing restrictions, including the GATT Article on which they are based, wherever applicable, within sixty days of their coming into effect.

3. It shall be open to any party to make reverse notifications to the TMB in regard to any restrictions that may not have been notified under the provision of paragraphs 1 and 2 above.

4. All non-MFA restrictions not consistent with GATT, to the extent that such restrictions do not fall within the competence of other relevant GATT bodies (e.g., safeguards, NTMs), shall be either: (a) brought into conformity with GATT within one year of the entry into force of this Agreement; or (b) phased-out within a period not exceeding the transitional period, according to a programme submitted by the party maintaining such restrictions to the TMB within six months of the entry into force of this Agreement. The phasing out of non-MFA restrictions not consistent with GATT shall be implemented in a manner equivalent to the phasing out of MFA restrictions provided for in Article 2 of this Agreement. The TMB may make recommendations to the GATT Council with respect to such a programme.

5. Any party to this agreement which considers that any other party is not fulfilling its obligations with respect to the bringing into conformity with the GATT or the phasing out of inconsistent restrictions, as provided for in paragraph 4 above, may notify the TMB and take up the matter for action under normal GATT procedures.

---

[1] Restrictions denote all unilateral quantitative restrictions, bilateral arrangements and any other quantitative measures having a restrictive effect.

ARTICLE 4

ADMINISTRATION OF RESTRICTIONS

1. Restrictions referred to in Article 2, and as provided for under Article 6, shall be administered by the exporting parties.

2. Parties agree that changes in the categorisation of textile products prevailing in the restraining parties on 31 December 1991 could frustrate the implementation of this Agreement. They, therefore, agree that any changes in such categorisation systems may only be made as set out in paragraph 3, below.

3. Parties agree that introduction of changes, such as changes in practices, rules, procedures and categorisation of textile products, including those changes relating to the Harmonised System, in the implementation or administration of restrictions under this Agreement, should not adversely affect the access level available to a party under this Agreement; impede the full utilization of such level; upset the balance or rights and obligations between the parties concerned; disrupt trade under this Agreement. When such changes are necessary, however, parties agree that the party initiating such changes shall, wherever possible, inform and initiate consultations with the affected party prior to the implementation of such changes, with a view to reaching a mutually acceptable solution regarding appropriate and equitable adjustments. Parties further agree that where consultation prior to implementation is not feasible, the party initiating such changes will consult as early as possible, and in any case within -- days, with the parties concerned with a view to reaching a mutually satisfactory solution regarding appropriate and equitable adjustments. If a mutually satisfactory solution is not reached, any party involved may refer the matter to the TMB for recommendations.

ARTICLE 5

FRAUD AND CIRCUMVENTION

1. Parties agree that circumvention by transshipment, re-routing and false declaration concerning country or place of origin frustrate the objective of this Agreement to integrate the textiles and clothing sector into the GATT. Accordingly, parties should establish the necessary legal provisions and/or administrative procedures to address and take action against such circumvention. Parties further agree that, consistent with their domestic laws and procedures, they will cooperate fully to address problems arising from circumvention.

2. Should any party believe that this Agreement is being circumvented by transshipment, re-routing or false declaration concerning country or place of origin and that no, or inadequate, measures are being applied to address or to take action against such circumvention, that party should consult with the party or parties concerned with a view to seeking a mutually satisfactory solution. Such consultations should be held promptly, and within 30 days where possible. If a mutually satisfactory solution is not reached, the matter may be referred by any party involved to the TMB for recommendations.

3. Parties agree to take necessary action to prevent, to investigate and, where appropriate, to take legal and/or administrative action against circumvention practices within their territory. Parties agree to cooperate fully, consistent with their domestic laws and procedures, in instances of circumvention or alleged circumvention of this Agreement, to establish the relevant facts in the places of import, export and, where applicable, transshipment. It is agreed that such cooperation, consistent with domestic laws and procedures, will include investigation of circumvention practices which increase restrained exports to the party maintaining such restraints; exchange of documents, correspondence, reports and other relevant information to the extent available; and facilitation of plant visits and contacts, upon request and on a case-by-case basis. Parties should endeavour to clarify the circumstances of any such instances of circumvention or alleged circumvention, including the respective roles of the exporters or importers involved.

4. Where, as a result of investigation, there is sufficient evidence that circumvention has occurred (e.g., where evidence is available concerning the place of true origin, and the circumstances of such circumvention) parties agree that appropriate action, to the extent necessary to address the problem, should be taken. Such action may include the denial of entry of goods or, where goods have entered, [having due regard to the actual circumstances and the involvement of the country of true origin] the adjustment of charges to restraint levels to reflect the true country of

origin. Also, where there is evidence of the involvement of the countries or places[1] through which the goods have been transshipped, such action may include the introduction of restraints with respect to such countries or places. Any such actions, together with their timing and scope, may be taken [after] [as agreed in] consultation between the concerned parties and shall be notified to the TMB with full justification. The parties concerned may agree on other remedies in consultation. If a mutually satisfactory solution is not reached, any party concerned may refer the matter to the TMB for recommendations.

5. Parties note that some cases of circumvention may involve shipments transiting through countries or places with no changes or alterations made to the goods contained in such shipments in the places of transit. They note that, it may not be generally practicable for such places of transit to exercise control over such shipments.

6. Parties agree that false declaration concerning fibre content, quantities, description or classification of merchandise also frustrate the objective of this Agreement. Where there is evidence that any such false declaration has been made for purposes of circumvention, parties agree that appropriate measures, consistent with domestic laws and procedures, should be taken against the exporters or importers involved. Should any party believe that this Agreement is being circumvented by such false declarations and that no, or inadequate, administrative measures are being applied to address and/or to take action against such circumvention, that party should consult promptly with the party involved with a view to seeking a mutually satisfactory solution. If such a solution is not reached, the matter may be referred by any party involved to the TMB for recommendations. This provision is not intended to prevent parties from making technical adjustments when inadvertent errors in declarations have been made.

---

[1] To be defined.

ARTICLE 6

SAFEGUARD MECHANISM DURING THE TRANSITIONAL PERIOD

1. Parties to this Agreement recognise that during the transition period it may be necessary to apply a specific transitional safeguard mechanism (hereinafter referred to as "transitional safeguard"). The transitional safeguard may be applied by any party, to all products covered by Annex II to this Agreement, except those integrated into the GATT under the provisions of Article 2.

2. Safeguard action may be taken under this Article when, on the basis of a determination by a party[1], it is demonstrated that a particular product is being imported into its territory in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like and/or directly competitive products. Serious damage or actual threat thereof must demonstrably result from such an increase in total imports and not from factors such as technological changes or changes in consumer preference.

3. In making a determination of serious damage, or actual threat thereof, as referred to in paragraph 2 above, the party shall examine the effect of those imports on the state of the particular industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits and investment; none of which, either alone or combined with other factors, can necessarily give decisive guidance.

4. Any measure invoked pursuant to the provisions of this Article shall be on a country-by-country basis. The party invoking a safeguard measure shall determine the party or parties contributing to the serious damage or actual threat thereof, referred to in paragraphs 2 and 3 above, through a sharp and substantial increase in imports, actual or imminent[2], from such a party or parties individually, and on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable

---

[1] [A customs union may apply a safeguard measure as a single unit or on behalf of a member state. - To be finalized in the light of the corresponding provision of the general Safeguard Agreement.]

[2] Such an imminent increase shall be a measurable one and shall not be determined to exist on the basis of allegation, conjecture or mere possibility arising, for example, from the existence of production capacity in the exporting countries.

stage of commercial transaction; none of these factors, either alone or combined with other factors, can necessarily give decisive guidance. The application of such safeguard measures shall not affect the party or parties whose exports of the particular product are already under restraint. [In principle, a party shall not be subject to restraints if the transitional safeguard is not applied to any other party that has a larger market share, in respect of the particular product.]

5. The period of validity of a determination of serious damage or actual threat thereof for the purpose of invoking safeguard action shall not exceed 90 days.

6. [The transitional safeguard should be applied as sparingly as possible, consistent with the provisions of this Article and the effective implementation of the integration process under this Agreement. In the application of the transitional safeguard, particular account shall be taken of the interests of exporting parties as set out below:

(a) Least-developed countries shall be accorded treatment significantly more favourable than that provided to the other groups referred to in this paragraph, preferably in all its elements but, at least, on overall terms.

(b) The economic terms relating to growth and flexibility rates to be accorded to new entrants shall take due account of the future possibilities for the development of their trade and the need to permit commercial quantities of imports, in order to further their economic and social development.

(c) Exports from parties whose total volume of textile exports is small in comparison with the total volume of exports of other parties, [and is one per cent or less of the total volume of imports of textiles of the importing party concerned, and not more than [X] per cent in the particular product] [and represent a small percentage of the total imports of textiles of the importing party concerned covered by this Agreement], shall be accorded differential and more favourable treatment when considering quota levels [and growth rates] [and flexibility] [as well as a shorter duration for the safeguard measure].

(d) Special consideration shall be given to the terms for safeguard action to be accorded to exports of cotton products originating in cotton-producing exporting parties substantially dependent upon the exports of cotton textile products.

(e) With respect to wool products from wool producing, developing parties whose economy and textile trade are dependent on the wool sector, whose total textile exports consist almost exclusively of wool textile products, and whose volume of textile trade is comparatively small in the markets of the importing parties, special consideration shall be given to the export needs of such countries when considering quota levels, growth rates and flexibility.

(f) [More favourable treatment shall be accorded to] [Transitional safeguard shall not be applied to] reimports into a country of textile products which that party has exported to another party for processing and subsequent reimportation, as defined by the laws and practices of the importing parties, and subject to satisfactory control and certification procedures, when these products are imported from a party for which this type of trade represents a significant proportion of its total exports of textiles and clothing.]

7. The party proposing to take safeguard action shall seek consultations with the party or parties which would be affected by such an action. The request for consultations shall be accompanied by specific and relevant factual information, as up-to-date as possible, particularly in regard to: (a) the factors, referred to in paragraph 3 above, on which the party invoking the action has based its determination of the existence of serious damage or actual threat thereof; and (b) the factors, referred to in paragraph 4 above, on the basis of which it proposes to invoke the safeguard action with respect to the party or parties concerned. The party invoking the action shall also indicate the specific level at which imports of the product in question from the party or parties concerned are proposed to be restrained; such level shall not be lower than the level referred to in paragraph 8, below. The request for consultations, along with the proposed restraint level shall, at the same time, be communicated to the TMB for information. The party or parties concerned shall respond to this request promptly and the consultations shall be held without delay and normally be completed within sixty days of the date on which the request has been received.

8. If, in the consultations, there is mutual understanding that the situation calls for restraint on the exports of the particular product from the party or parties concerned, the level of such restraint shall be fixed at a level not lower than [(a) the actual level of exports or imports from the party concerned during the twelve month period terminating two months preceding the month in which the request for consultation was made, or (b) the average of actual exports of imports during the last three years for which trade data are available, whichever is higher.]

9. Details of the agreed restraint measure shall be communicated to the TMB, which shall determine whether the agreement is justified in accordance with the provisions of this Article. The TMB may make such recommendations as it deems appropriate to the parties concerned.

10. If, however, after the expiry of the period of sixty days from the date on which the request for consultations was received, there has been no agreement between the parties, the party which proposed to take safeguard action may apply the restraints [by date of import or date of export] in accordance with the provisions of this Article within 30 days following the sixty days period for consultations and at the same time refer the matter to the TMB. It shall be open to either party to refer the matter to the TMB before the expiry of the period of sixty days. In either case, the TMB shall promptly conduct

an examination of the matter, and make appropriate recommendations to the parties concerned within thirty days.[1]

11. In highly unusual and critical circumstances, where delay would cause damage which would be difficult to repair, action under paragraph 10, above, may be taken provisionally on the condition that consultations shall be effected immediately after the taking of the action. In such a case, the provisions of paragraph 7 above relating to notification shall apply. The outcome of the consultations shall be notified to the TMB upon conclusion but, in any case, not later than the sixty day period set out in paragraph 7. The matter will be dealt with in the same manner as provided for in the relevant parts of paragraphs 9 and 10 above.

12. Measures invoked pursuant to the provisions of this Article may remain in place: (a) [for up to three years without extension] [for one year with possible extension for a maximum of two years], or (b) until the product is removed from the scope of this Agreement, whichever comes first.

13. If, in the view of the restraining party, there is need to continue with the measure for a further period of ......, [it shall, not later than sixty days before the expiry of the measure, produce evidence in terms of paragraphs 2 to 4 above, in relation to the need for extension, before the TMB. The TMB shall examine the matter and make appropriate recommendations to the parties concerned within thirty days] [it shall be free to do so provided that agreement is reached between the parties directly concerned on such extension, including the possibility of compensatory adjustment elsewhere. Proposals for extension shall be submitted to the TMB which shall make the appropriate recommendations].

14. Should the restraint measure remain in force for a period exceeding one year, the level for subsequent year[s] shall be the level specified for the first year increased by a growth rate of [not lower than 6 per cent per annum; in the case of wool products, not lower than 1 per cent per annum]. Flexibility i.e., [swing], carryover and carry forward, shall be provided [as set out in paragraph 11 of Article 2] [as set out in this Article].

15. If safeguard action is taken on a product for which a restraint was previously in place in 1991 under the MFA or pursuant to the

---

[1] For further procedures in relation to TMB recommendations, see Article 9.

provisions of Article 2 or 6 of this Agreement, the level of the new restraint shall be the level provided for in paragraph 8 of this Article unless the period provided therein overlaps with the previous restraint, in which case the level shall be: (i) the level provided for in the restraint, or the level of actual imports or exports, whichever is higher, except in case of over-shipment, for the months where the period referred to in paragraph 8 overlap; and (ii) the level of actual imports or exports for the months where no overlap occurs.

ARTICLE 7

ADDITIONAL TRADE MEASURES

1. [Without prejudice to the provisions of Article 1, paragraph 4, parties [maintaining restrictions] under this Agreement shall refrain from taking additional trade measures which may have the effect of nullifying the objective of this Agreement or impairing the liberalization process. [Parties maintaining restrictions shall not levy anti-dumping or countervailing duties during the transitional period on textile products covered by this Agreement].

ARTICLE 8

GATT RULES AND DISCIPLINES

1. As part of the integration process and with reference to the specific commitments undertaken by the parties in the Uruguay Round, all parties shall take such actions as may be necessary to abide by GATT rules and disciplines so as to:

(i) promote improved access to markets for textiles and clothing through such measures as tariff reductions and bindings, reduction or elimination of non-tariff barriers, and facilitation of customs, administrative and licensing formalities;

(ii) ensure the application of provisions relating to fair and equitable trading conditions as regards textiles and clothing in such areas as dumping and anti-dumping rules and procedures, subsidies and countervailing measures, and protection of intellectual property rights[1]; and

(iii) avoid discrimination against imports in the textiles and clothing sector when taking measures for general trade policy reasons.

Such actions shall be without prejudice to the rights and obligations of parties under GATT.

2. Parties shall notify to the TMB the actions referred to in paragraph 1 above which have a bearing on the implementation of this Agreement. To the extent that these have been notified to other GATT committees or bodies, a summary, with reference to the original notification, shall be sufficient to fulfil the requirements under this paragraph. It shall be open to any party to make reverse notifications to the TMB.

3. Where any party considers that another party has not taken the actions referred to in paragraph 1 above, that party may bring the matter before the relevant GATT committees and bodies and inform the TMB. Any subsequent findings or conclusions by the GATT committees and bodies concerned shall form a part of the TMB's comprehensive report.

---

[1] Subject to the final decision on the Agreement in this area.

ARTICLE 9

MONITORING, SURVEILLANCE, REVIEW AND DISPUTE SETTLEMENT

1. In order to supervise the implementation of this Agreement, to examine all measures taken under its provisions and their conformity therewith, and to take the actions specifically required of it in the articles of this Agreement, there shall be established by the [GATT Council] a Textiles Monitoring Body (herein referred to as the TMB). The TMB shall consist of a Chairman and 10 members. Its membership shall be balanced and broadly representative of the parties and shall provide for rotation of its members at appropriate intervals. The members shall be appointed by parties designated by the [GATT Council] to serve on the TMB discharging their function on an ad personam basis. The TMB will develop its own working procedures.

2. The TMB shall be considered as a standing body and shall meet as necessary to carry out the functions required of it under this Agreement. It shall rely on notifications and information supplied by the parties under the relevant articles of this Agreement, supplemented by any additional information or necessary details they may submit or it may decide to seek from them. It may also rely on notifications to and reports from other GATT committees and bodies and from such other sources as it may deem appropriate.

3. Parties shall afford to each other adequate opportunity for consultations with respect to any matters affecting the operation of this Agreement.

4. In the absence of any mutually agreed solution in the bilateral consultations provided for in this Agreement, the TMB shall, at the request of either party, and following a thorough and prompt consideration of the matter, make recommendations to the parties concerned.

5. At the request of any party, the TMB shall review promptly any particular matter which that party considers to be detrimental to its interests under this Agreement where consultations between it and the party or parties concerned have failed to produce a mutually satisfactory solution. On such matters, the TMB may make such observations as it deems appropriate to the parties concerned and for the purposes of the review provided for in paragraph 10, below.

6. Before formulating its recommendations or observations, the TMB shall invite participation of such parties as may be directly affected by the matter in question.

7. Whenever the TMB is called upon to make recommendations or findings, it shall do so, preferably within a period of 30 days, unless a different time period is specified in this Agreement. All such recommendations or

findings shall be communicated to the parties directly concerned and to the [GATT Council].

8. The parties shall endeavour to accept in full the recommendations of the TMB which shall exercise proper surveillance of the implementation of such recommendations.

9. If a party considers itself unable to conform with the recommendations of the TMB, it shall provide the TMB with the reasons therefor not later than one month after receipt of such recommendations. Following thorough consideration of the reasons given, the TMB shall issue any further recommendations it considers appropriate forthwith. It shall be open to either party to bring the matter before the [GATT Council].

10. In order to oversee the implementation of the Agreement, the [GATT Council] shall conduct a major review before the end of each stage of the integration process. To assist in this review, the TMB shall, at least 5 months before the end of each stage, transmit to the [GATT Council] a comprehensive report on the implementation of this Agreement during the stage under review, in particular in matters with regard to the integration process, the application of the transitional safeguard mechanism, and relating to the application of GATT rules and disciplines as defined in Articles 2, 6 and 8 of this Agreement, respectively.

11. In the light of its review, the [GATT Council] shall take such decisions as it deems appropriate to ensure that the balance of rights and obligations embodied in this Agreement is not being impaired. [Such decisions may include adjustment of the provisions of this Agreement, relating to the process of integration for the stage subsequent to the review, with respect to any party found not to be complying with its obligations thereunder, without prejudicing the final date as set out under Article 10 of this Agreement.]

ARTICLE 10

TIME SPAN

1. This Agreement shall enter into force on 1 January 1992, and terminate on ....at which time the textiles and clothing sector shall be fully integrated into GATT.

ARTICLE 11

FINAL PROVISIONS

1. This Agreement shall enter into force on 1 January 1992 ...

2. Notwithstanding the provisions of paragraph 1 above, the notification requirements set out in Article 2, paragraph 5 of this Agreement shall be provisionally applied as from 1 July 1991 for the parties which have signed this Agreement.

3. ....

ANNEX I

LIST OF PRODUCTS FOR THE PURPOSES OF NOTIFICATION PROCEDURES, BUT NOT FOR ACTIONS UNDER ARTICLES 2 AND 6 OF THIS AGREEMENT

(TO BE DISCUSSED)

ANNEX II

LIST OF PRODUCTS COVERED BY THIS AGREEMENT FOR THE PURPOSES OF ARTICLES 2 AND 6

This Annex lists textile products identified by Harmonized Commodity Description and Coding System (HS) codes at the six digit level which will constitute the basis for the integration of products into GATT during the transition period in accordance with Article 2 of this Agreement, and for products that will be subject to the safeguard mechanism under Article 6, until integrated into GATT pursuant to the provisions of Article 2. Actions under the safeguard provisions in Article 6 will be taken on particular textile and clothing products and not on the basis of the HS lines *per se*.

HS No. (1)	Product description (2)
	Section 11
Ch. 50	Silk.
5004 00	Silk yarn (other than yarn spun from silk waste) nt put up f retl sale
5005 00	Yarn spun from silk waste, not put up for retail sale
5006 00	Silk yarn&yarn spun from silk waste, put up f retail sale; silk-worm gut
5007 10	Woven fabrics of noil silk
5007 20	Woven fabrics of silk/silk waste, other than noil silk, 85%/more of such fibres
5007 90	Woven fabrics of silk, nes
Ch. 51	Wool, fine/coarse animal hair, horsehair yarn & fabric
5105 10	Carded wool
5105 21	Combed wool in fragments
5105 29	Wool tops and other combed wool, other than combed wool in fragments
5105 30	Fine animal hair, carded or combed
5106 10	Yarn of carded wool,>/=85% by wght of wool, nt put up for retail sale
5106 20	Yarn of carded, wool,<85% by weight of wool, not put up for retail sale
5107 10	Yarn of combed wool,>/=85% by wght of wool, not put up for retail sale
5107 20	Yarn of combed wool,<85% by weight of wool, not put up for retail sale
5108 10	Yarn of carded fire animal hair, not put up for retail sale
5108 20	Yarn of combed fine animal hair, not put up for retail sale
5109 10	Yarn of wool/of fine animal hair,>/=85% by wght of such fibres, put up
5109 90	Yarn of wool/of fine animal hair,<85% by weight of such fibres, put up
5110 00	Yarn of coarse animal hair or of horsehair
5111 11	Woven fabrics of cardd wool/fine animl hair,>/=85% by wght,</=300 g/m2
5111 19	Woven fabrics of carded wool/fine animal hair,>/=85% by wght,>300 g/m2
5111 20	Woven fabric of cardd wool/fine animl hair,>/=85% by wt, mixd w m-m fi
5111 30	Woven fabric of cardd wool/fine animl hair,>/=85% by wt, mixd w m-m fib
5111 90	Woven fabrics of carded wool/fine animal hair,>/= 85% by wght, nes
5112 11	Woven fabric of combd wool/fine animal hair,>/=85% by wght,</=200 g/m2
5112 19	Woven fabrics of combed wool/fine animal hair,>/=85% by wght,>200 g/m2
5112 20	Woven fabrics of combd wool/fine animal hair,<85% by wt, mixd w m-m fil
5112 30	Woven fabrics of combd wool/fine animal hair,<85% by wt, mixd w m-m fib
5112 90	Woven fabrics of combed wool/fine animal hair, <85% by weight, nes
5113 00	Woven fabrics of coarse animal hair or of horsehair
Ch. 52	Cotton.
5203 00	Cotton, carded or combed
5204 11	Cotton sewg thread >/=85% by wght of cotton, not put up for retail sale
5204 19	Cotton sewg thread,<85% by weight of cotton, not put up for retail sale
5204 20	Cotton sewing thread, put up for retail sale
5205 11	Cotton yarn,>/=85%,single, uncombd,>/=714.29 dtex, nt put up
5205 12	Cotton yarn,>/=85%,single, uncombed, 714.29 >dtex>/=232.56, not put up
5205 13	Cotton yarn,>/=85%,single, uncombed, 232.56>dtex>/=192.31, not put up
5205 14	Cotton yarn,>/=85%,single, uncombed, 192.31 >dtex>/=125, not put up
5205 15	Cotton yarn,>/=85%,single, uncombd,<125 dtex, nt put up f retail sale
5205 21	Cotton yarn,>/=85%, single, combed,>/=714.29, not put up
5205 22	Cotton yarn,>/=85%,single, combed, 714.29 >dtex>/=232.56, not put up
5205 23	Cotton yarn,>/=85%, single, combed, 232.56 >dtex>/=192.31, not put up
5205 24	Cotton yarn,>/=85%, single, combed, 192.31 >dtex>/=125, not put up
5205 25	Cotton yarn,>/=85%,single, combed,<125 dtex, not put up for retail sale
5205 31	Cotton yarn,>/=85%, multi, uncombed,>/=714.29 dtex, not put up, nes
5205 32	Cotton yarn,>/=85%,multi, uncombed, 714.29 >dtex>/=232.56, nt put up, nes
5205 33	Cotton yarn,>/=85%,multi, uncombed, 232.56 >dtex>/=192.31, nt put up, nes

5205 34	Cotton yarn,>/-85%,multi, uncombed, 192.31 >dtex>/-125, nt put up, nes
5205 35	Cotton yarn,>/-85%,multi, uncombed, <125 dtex, not put up, nes
5205 41	Cotton yarn,>/-85%, multiple, combed,>/-714.29 dtex, not put up, nes
5205 42	Cotton yarn,>/-85%,multi, combed, 714.29 >dtex>/-232.56, nt put up, nes
5205 43	Cotton yarn,>/-85%,multi, combed, 232.56 >dtex>/-192.31, nt put up, nes
5205 44	Cotton yarn,>/-85%,multiple, combed, 192.31 >dtex>/-125, not put up, nes
5205 45	Cotton yarn,>/-85%, multiple, combed, <125 dtex, not put up, nes
5206 11	Cotton yarn, <85%, single, uncombed,>/-714.29, not put up
5206 12	Cotton yarn, <85%, single, uncombed, 714.29 >dtex>/-232.56, nt put up
5206 13	Cotton yarn, <85%, single, uncombed, 232.56 >dtex>/-192.31, not put up
5206 14	Cotton yarn, <85%, single, uncombed, 192.31 >dtex>/-125, nt put up
5206 15	Cotton yarn,<85%,single, uncombed,<125 dtex, not put up for retail sale
5206 21	Cotton yarn, <85%, single, combed,>/-714.29 dtex, nt put up
5206 22	Cotton yarn, <85%, single, combed, 714.29 >dtex>/-232.56, not put up
5206 23	Cotton yarn, <85%, single, combed, 232.56 >dtex>/-192.31, not put up
5206 24	Cotton yarn, <85%, single, combed, 192.31 >dtex>/-125, not put up
5206 25	Cotton yarn,<85%,single, combed,<125 dtex, not put up for retail sale
5206 31	Cotton yarn, <85%, multiple, uncombed,>/-714.29, not put up, nes
5206 32	Cotton yarn,<85%,multiple, uncombed, 714.29 >dtex>/-232.56, nt put up, nes
5206 33	Cotton yarn,<85%,multiple, uncombed, 232.56 >dex>/-192.31, nt put up, nes
5206 34	Cotton yarn,<85%,multiple, uncombed, 192.31 >dtex>/-125, nt put up, nes
5206 35	Cotton yarn, <85%, multiple, uncombed, <125 dtex, not put up, nes
5206 41	Cotton yarn, <85%, multiple, combed,>/-714.29, nt put up, nes
5206 42	Cotton yarn,<85%,multiple, combed, 714.29 >dtex>/-232.56, nt put up, nes
5206 43	Cotton yarn,<85%,multiple, combed, 232.56 >dtex>/-192.31, nt put up, nes
5206 44	Cotton yarn,<85%,multiple, combed, 192.31 >dtex>/-125, nt put up, nes
5206 45	Cotton yarn, <85%, multiple, combed, <125 dtex, not put up, nes
5207 10	Cotton yarn (other than sewing thread);>/-85% by weight of cotton, put up
5207 90	Cotton yarn (other than sewg thread) <85% by wt of cotton, put up f retl sale
5208 11	Plain weave cotton fabric,>/-85%, not more than 100 g/m2, unbleached
5208 12	Plain weave cotton fabric,>/-85%, >100 g/m2 to 200 g/m2, unbleached
5208 13	Twill weave cotton fabric,>/-85%, not more than 200 g/m2, unbleached
5208 19	Woven fabrics of cotton,>/-85%, not more than 200 g/m2, unbleached, nes
5208 21	Plain weave cotton fabrics,>/-85%, not more than 100 g/m2, bleached
5208 22	Plain weave cotton fabric,>/-85%, >100 g/m2 to 200 g/m2, bleached
5208 23	Twill weave cotton fabric,>/-85%, not more than 200 g/m2, bleached
5208 29	Woven fabrics of cotton,>/-85%, nt more than 200 g/m2, bleached, nes
5208 31	Plain weave cotton fabric,>/-85%, not more than 100 g/m2, dyed
5208 32	Plain weave cotton fabric,>/-85%,>100g/m2 to 200g/m2, dyed
5208 33	Twill weave cotton fabrics,>/-85%, not more than 200 g/m2, dyed
5208 39	Woven fabrics of cotton,>/-85%, not more than 200 g/m2, dyed, nes
5208 41	Plain weave cotton fabric,>/-85%, not more than 100 g/m2, yarn dyed
5208 42	Plain weave cotton fabrics,>/-85%, >100 g/m2 to 200 g/m2, yarn dyed
5208 43	Twill weave cotton fabric,>/-85%, not more than 200 g/m2, yarn dyed
5208 49	Woven fabrics of cotton,>/-85%,nt more than 200 g/m2, yarn dyed, nes
5208 51	Plain weave cotton fabrics,>/-85%, not more than 100 g/m2, printed
5208 52	Plain weave cotton fabric,>/-85%, >100 g/m2 to 200 g/m2, printed
5208 53	Twill weave cotton fabric,>/-85%, not more than 200 g/m2, printed
5208 59	Woven fabrics of cotton,>/-85%, not more than 200 g/m2, printed, nes
5209 11	Plain weave cotton fabric,>/-85%, more than 200 g/m2, unbleached
5209 12	Twill weave cotton fabric,>/-85%, more than 200 g/m2, unbleached
5209 19	Woven fabrics of cotton,>/-85%,more than 200 g/m2, unbleached, nes

5209 21	Plain weave cotton fabric,>/=85%, more than 200 g/m2, bleached
5209 22	Twill weave cotton fabrics,>/=85%, more than 200 g/m2, bleached
5209 29	Woven fabrics of cotton,>/=85%, more than 200 g/m2, bleached, nes
5209 31	Plain weave cotton fabrics,>/=85%, more than 200 g/m2, dyed
5209 32	Twill weave cotton fabrics,>/=85%, more than 200 g/m2, dyed
5209 39	Woven fabrics of cotton,>/=85%, more than 200 g/m2, dyed, nes
5209 41	Plain weave cotton fabrics,>/=85%, more than 200 g/m2, yarn dyed
5209 42	Denim fabrics of cotton,>/=85%, more than 200 g/m2
5209 43	Twill weave cotton fab, other than denim,>/=85%,more than 200 g/m2, yarn dyed
5209 49	Woven fabrics of cotton,>/=85%, more than 200 g/m2, yarn dyed, nes
5209 51	Plain weave cotton fabrics,>/=85%, more than 200 g/m2, printed
5209 52	Twill weave cotton fabrics,>/=85%, more than 200 g/m2, printed
5209 59	Woven fabrics of cotton,>/=85%, more than 200 g/m2, printed, nes
5210 11	Plain weave cotton fab,<85% mixd w m-m fib, not more than 200 g/m2, unbl
5210 12	Twill weave cotton fab,<85% mixd w m-m fib, not more than 200 g/m2, unbl
5210 19	Woven fab of cotton,<85% mixd with m-m fib,</=200 g/m2, unbl, nes
5210 21	Plain weave cotton fab,<85% mixd w m-m fib, not more than 200 g/m2, bl
5210 22	Twill weave cotton fab,<85% mixd w m-m fib, not more than 200 g/m2, bl
5210 29	Woven fabrics of cotton,<85% mixd with m-m fib,</=200 g/m2, bl, nes
5210 31	Plain weave cotton fab,<85% mixd w m-m fib, not more than 200 g/m2, dyd
5210 32	Twill weave cotton fab,<85% mixd w m-m fib, not more than 200 g/m2, dyd
5210 39	Woven fabrics of cotton,<85% mixd with m-m fib,</=200 g/m2, dyed, nes
5210 41	Plain weave cotton fab,<85% mixd w m-m fib, nt mor thn 200g/m2, yarn dyd
5210 42	Twill weave cotton fab,<85% mixd w m-m fib, nt mor thn 200g/m2, yarn dyd
5210 49	Woven fabrics of cotton,<85^ mixed w m-m fib,</=200g/m2, yarn dyed, nes
5210 51	Plain weave cotton fab,<85% mixd w m-m fib, nt more thn 200 g/m2, printd
5210 52	Twill weave cotton fab,<85% mixd w m-m fib, nt more thn 200g/m2, printd
5210 59	Woven fabrics of cotton,<85% mixed with m-m fib,</=200g/m2, printed, nes
5211 11	Plain weave cotton fab,<85% mixd w m-m fib, more thn 200 g/m2, unbleachd
5211 12	Twill weave cotton fab,<85% mixed with m-m fib, more than 200 g/m2, unbl
5211 19	Woven fabrics of cotton,<85% mixd w m-m fib, more thn 200g/m2, unbl, nes
5211 21	Plain weave cotton fab,<85% mixd w m-m fib, more than 200 g/m2, bleachd
5211 22	Twill weave cotton fab,<85% mixd w m-m fib, more than 200 g/m2, bleachd
5211 29	Woven fabrics of cotton,<85% mixd w m-m fib, more than 200 g/m2, bl, nes
5211 31	Plain weave cotton fab,<85% mixed with m-m fib, more than 200 g/m2, dyed
5211 32	Twill weave cotton fab,<85% mixed with m-m fib, more than 200 g/m2, dyed
5211 39	Woven fabrics of cotton,<85% mixd w m-m fib, more than 200 g/m2, dyd, nes
5211 41	Plain weave cotton fab,<85% mixd w m-m fib, more than 200 g/m2, yarn dyd
5211 42	Denim fabrics of cotton, <85% mixed with m-m fib, more than 200 g/m2
5211 43	Twill weave cotton fab, other than denim,<85% mixd w m-m fib,>200g/m2, yarn dyd
5211 49	Woven fabrics of cotton,<85% mixd with m-m fib,>200 g/m2, yarn dyed, nes
5211 51	Plain weave cotton fab,<85% mixd w m-m fib, more than 200 g/m2, printd
5211 52	Twill weave cotton fab,<85% mixd w m-m fib, more than 200 g/m2, printd
5211 59	Woven fabrics of cotton,<85% mixd w m-m fib, mor thn 200g/m2, printd, nes
5212 11	Woven fabrics of cotton, weighing not more than 200 g/m2, unbleached, nes
5212 12	Woven fabrics of cotton, weighing not more than 200 g/m2, bleached, nes
5212 13	Woven fabrics of cotton, weighing not more than 200 g/m2, dyed, nes
5212 14	Woven fabrics of cotton,</=200g/m2, of yarns of different colours, nes
5212 15	Woven fabrics of cotton, weighing not more than 200 g/m2, printed, nes
5212 21	Woven fabrics of cotton, weighing more than 200 g/m2, unbleached, nes
5212 22	Woven fabrics of cotton, weighing more than 200 g/m2, bleached, nes
5212 23	Woven fabrics of cotton, weighing more than 200 g/m2, dyed, nes

5212 24	Woven fabrics of cotton, >200 g/m2, of yarns of different colours, nes
5212 25	Woven fabrics of cotton, weighing more than 200 g/m2, printed, nes
Ch. 53	Other vegetable textile fibres; paper yarn & woven fab
5306 10	Flax yarn, single
5306 20	Flax yarn, multile (folded) or cabled
5307 10	Yarn of jute or of other textile bast fibres, single
5307 20	Yarn of jute or of oth textile bast fibres, multiple (folded) or cabled
5308 20	True hemp yarn
5308 90	Yarn of other vegetable textile fibres
5309 11	Woven fabrics, containg 85% or more by weight of flax, unbleached or bl
5309 19	Woven fabrics, containing 85% or more by weight of flax, other than unbl or bl
5309 21	Woven fabrics of flax, containg <85% by weight of flax, unbleached or bl
5309 29	Woven fabrics of flax, containing <85% by weight of flax, other than unbl or bl
5310 10	Woven fabrics of jute or of other textile bast fibres, unbleached
5310 90	Woven fabrics of jute or of other textile bast fibres, other than unbleached
5311 00	Woven fabrics of oth vegetable textile fibres; woven fab of paper yarn
Ch. 54	Man-made filaments.
5401 10	Sewing thread of synthetic filaments
5401 20	Sewing thread of artificial filaments
5402 10	High tenacity yarn (other than sewg thread),nylon/oth polyamides fi, nt put up
5402 20	High tenacity yarn (other than sewg thread),of polyester filaments, not put up
5402 31	Texturd yarn nes, of nylon/oth polyamides fi,</=50tex/s.y.,not put up
5402 32	Texturd yarn nes, of nylon/oth polyamides fi,>50 tex/s.y.,not put up
5402 33	Textured yarn nes, of polyester filaments, not put up for retail sale
5402 39	Textured yarn of synthetic filaments, nes, not put up
5402 41	Yarn of nylon or other polyamides fi, single, untwisted, nes, not put up
5402 42	Yarn of polyester filaments, partially oriented, single, nes, not put up
5402 43	Yarn of polyester filaments, single, untwisted, nes, not put up
5402 49	Yarn of synthetic filaments, single, untwisted, nes, not put up
5402 51	Yarn of nylon or other polyamides fi, single, >50 turns/m, not put up
5402 52	Yarn of polyester filaments, single, >50 turns per metre, not put up
5402 59	Yarn of synthetic filaments, single,>50 turns per metre, nes, not put up
5402 61	Yarn of nylon or other polyamides fi, multiple, nes, not put up
5402 62	Yarn of polyester filaments, multiple, nes, not put up
5402 69	Yarn of synthetic filaments, multiple, nes, not put up
5403 10	High tenacity yarn (other than sewg thread),of viscose rayon filamt, nt put up
5403 20	Textured yarn nes, of artificial filaments, not put up for retail sale
5403 31	Yarn of viscose rayon filaments, single, untwisted, nes, not put up
5403 32	Yarn of viscose rayon filaments, single,>120 turns per m. nes, nt put up
5403 33	Yarn of cellulose acetate filaments, single, nes, not put up
5403 39	Yarn of artificial filaments, single, nes, not put up
5403 41	Yarn of viscose rayon filaments, multiple, nes, not put up
5403 42	Yarn of cellulose acetate filaments, multiple, nes, not put up
5403 49	Yarn of artificial filaments, multiple, nes, not put up
5404 10	Synthetic mono,>/=67dtex, no cross sectional dimension exceeds 1 mm
5404 90	Strip&the like of syn tex material of an apparent width nt exceedg 5mm
5405 00	Artificial mono, 67 dtex, cross-sect >1mm; strip of arti tex mat w </=5mm
5406 10	Yarn of synthetic filament (other than sewing thread), put up for retail sale
5406 20	Yarn of artificial filament (other than sewing thread),put up for retail sale
5407 10	Woven fab of high tenacity fi yarns of nylon oth polyamides/polyesters

5407 20	Woven fab obtaind from strip/the like of synthetic textile materials
5407 30	Fabrics specif in Note 9, Section XI (layers of parallel syn tex yarn)
5407 41	Woven fab,>/=85% of nylon/other polyamides filaments, unbl or bl, nes
5407 42	Woven fabrics,>/=85% of nylon/other polyamides filaments, dyed, nes
5407 43	Woven fab,>/=85% of nylon/other polyamides filaments, yarn dyed, nes
5407 44	Woven fabrics,>/=85% of nylon/other polyamides filaments, printed, nes
5407 51	Woven fabrics,>/=85% of textured polyester filaments, unbl or bl, nes
5407 52	Woven fabrics,>/=85% of textured polyester filaments, dyed, nes
5407 53	Woven fabrics,>/=85% of textured polyester filaments, yarn dyed, nes
5407 54	Woven fabrics,>/=85% of textured polyester filaments, printed, nes
5407 60	Woven fabrics,>/=85% of non-textured polyester filaments, nes
5407 71	Woven fab,>/=85% of synthetic filaments, unbleached or bleached, nes
5407 72	Woven fabrics,>/=85% of synthetic filaments, dyed, nes
5407 73	Woven fabrics,>/=85% of synthetic filaments, yarn dyed, nes
5407 74	Woven fabrics,>/=85% of synthetic filaments, printed, nes
5407 81	Woven fabrics of synthetic filaments,<85% mixd w cotton, unbl o bl, nes
5407 82	Woven fabrics of synthetic filaments,<85% mixed with cotton, dyed, nes
5407 83	Woven fabrics of synthetic filaments,<85% mixd w cotton, yarn dyd, nes
5407 84	Woven fabrics of synthetic filaments,<85% mixd with cotton, printed, nes
5407 91	Woven fabrics of synthetic filaments, unbleached or bleached, nes
5407 92	Woven fabrics of synthetic filaments, dyed, nes
5407 93	Woven fabrics of synthetic filaments, yarn dyed, nes
5407 94	Woven fabrics of synthetic filaments, printed, nes
5408 10	Woven fabrics of high tenacity filament yarns of viscose rayon
5408 21	Woven fab,>/=85% of artificial fi o strip of art tex mat, unbl/bl, nes
5408 22	Woven fab,>/=85% of artificial fi or strip of art tex mat, dyed, nes
5408 23	Woven fab,>/=85% of artificial fi or strip of art tex mat, y dyed, nes
5408 24	Woven fab,>/=85% of artificial fi or strip of art tex mat, printd, nes
5408 31	Woven fabrics of artificial filaments, unbleached or bleached, nes
5408 32	Woven fabrics of artificial filaments, dyed, nes
5408 33	Woven fabrics of artificial filaments, yarn dyed, nes
5408 34	Woven fabrics of artificial filaments, printed, nes
Ch. 55	Man-made staple fibres.
5501 10	Filament tow of nylon or other polyamides
5501 20	Filament tow of polyesters
5501 30	Filament tow of acrylic or modacrylic
5501 90	Synthetic filament tow, nes
5502 00	Artificial filament tow
5503 10	Staple fibres of nylon or other polyamides, not carded or combed
5503 20	Staple fibres of polyesters, not carded or combed
5503 30	Staple fibres of acrylic or modacrylic, not carded or combed
5503 40	Staple fibres of polypropylene, not carded or combed
5503 90	Synthetic staple fibres, not carded or combed, nes
5504 10	Staple fibres of viscose, not carded or combed
5504 90	Artificial staple fibres, other than viscose, not carded or combed
5505 10	Waste of synthetic fibres
5505 20	Waste of artificial fibres
5506 10	Staple fibres of nylon or other polyamides, carded or combed
5506 20	Staple fibres of polyesters, carded or combed
5506 30	Staple fibres of acrylic or modacrylic, carded or combed
5506 90	Synthetic staple fibres, carded or combed, nes

5507 00	Artificial staple fibres, carded or combed
5508 10	Sewing thread of synthetic staple fibres
5508 20	Sewing thread of artificial staple fibres
5509 11	Yarn,>/=85% nylon or other polyamides staple fibres, single, not put up
5509 12	Yarn,>/=85% nylon o oth polyamides staple fibres, multi, not put up, nes
5509 21	Yarn,>/=85% of polyester staple fibres, single, not put up
5509 22	Yarn,>/=85% of polyester staple fibres, multiple, not put up, nes
5509 31	Yarn,>/=85% of acrylic or modacrylic staple fibres, single, not put up
5509 32	Yarn,>/=85% acrylic/modacrylic staple fibres, multiple, not put up, nes
5509 41	Yarn,>/=85% of other synthetic staple fibres, single, not put up
5509 42	Yarn,>/=85% of other synthetic staple fibres, multiple, not put up, nes
5509 51	Yarn of polyester staple fibres mixd w/ arti staple fib, not put up, nes
5509 52	Yarn of polyester staple fib mixd w wool/fine animl hair, nt put up, nes
5509 53	Yarn of polyester staple fibres mixed with cotton, not put up, nes
5509 59	Yarn of polyester staple fibres, not put up, nes
5509 61	Yarn of acrylic staple fib mixd w wool/fine animal hair, not put up, nes
5509 62	Yarn of acrylic staple fibres mixed with cotton, not put up, nes
5509 69	Yarn of acrylic staple fibres, not put up, nes
5509 91	Yarn of oth synthetic staple fibres mixed w/wool/fine animal hair, nes
5509 92	Yarn of other synthetic staple fibres mixed with cotton, not put up, nes
5509 99	Yarn of other synthetic staple fibres, not put up, nes
5510 11	Yarn,>/=85% of artificial staple fibres, single, not put up
5510 12	Yarn,>/=85% of artificial staple fibres, multiple, not put up, nes
5510 20	Yarn of artificl staple fib mixd w wool/fine animl hair, not put up, nes
5510 30	Yarn of artificial staple fibres mixed with cotton, not put up, nes
5510 90	Yarn of artificial staple fibres, not put up, nes
5511 10	Yarn,>/=85% of synthetic staple fibres, other than sewing thread, put up
5511 20	Yarn, <85% of synthetic staple fibres, put up for retail sale, nes
5511 30	Yarn of artificial fibres (other than sewing thread), put up for retail sale
5512 11	Woven fabrics, containing>/=85% of polyester staple fibres, unbl or bl
5512 19	Woven fabrics, containg>/=85% of polyester staple fibres, other than unbl or bl
5512 21	Woven fabrics, containg>/=85% of acrylic staple fibres, unbleached or bl
5512 29	Woven fabrics, containing>/=85% of acrylic staple fibres, other than unbl or bl
5512 91	Woven fabrics, containing>/=85% of oth synthetic staple fibres, unbl/bl
5512 99	Woven fabrics, containg>/=85% of other synthetic staple fib, other than unbl/bl
5513 11	Plain weave polyest stapl fib fab,<85%,mixd w/cottn,</=170g/m2, unbl/bl
5513 12	Twill weave polyest stapl fib fab,<85%,mixd w/cottn,</=170g/m2, unbl/bl
5513 13	Woven fab of polyest staple fib,<85% mixd w/cot,</=170g/m2, unbl/bl, nes
5513 19	Woven fabrics of oth syn staple fib,<85%,mixd w/cot,</=170g/m2, unbl/bl
5513 21	Plain weave polyester staple fib fab,<85%,mixd w/cotton,</=170g/m2, dyd
5513 22	Twill weave polyest staple fib fab,<85%,mixd w/cotton,</=170g/m2, dyd
5513 23	Woven fab of polyester staple fib,<85%,mixd w/cot,</=170 g/m2, dyd, nes
5513 29	Woven fabrics of oth syn staple fib,<85% mixd w/cotton,</=170g/m2, dyed
5513 31	Plain weave polyest stapl fib fab,<85% mixd w/cot,</=170g/m2, yarn dyd
5513 32	Twill weave polyest stapl fib fab,<85% mixd w/cot,</=170g/m2, yarn dyd
5513 33	Woven fab of polyest staple fib,<85% mixd w/cot,</=170 g/m2, dyd nes
5513 39	Woven fab of oth syn staple fib,<85% mixd w/cot,</=170g/m2, yarn dyd
5513 41	Plain weave polyester stapl fib fab,<85%,mixd w/cot,</=170g/m2, printd
5513 42	Twill weave polyest staple fib fab,<85%,mixd w/cot,<=/170g/m2, printd
5513 43	Woven fab-of polyester staple fib,<85%,mixd w/cot,</=170g/m2, ptd, nes
5513 49	Woven fab of oth syn staple fib,<85%,mixed w/cot,</=170g/m2, printed
5514 11	Plain weave polyest staple fib fab,<85%,mixd w/cotton,>170g/m2, unbl/bl

5514 12	Twill weave polyest stapl fib fab,<85%,mixd w/cotton,>170g/m2, unbl/bl
5514 13	Woven fab of polyester staple fib,<85% mixd w/cot,>170g/m2, unbl/bl, nes
5514 19	Woven fabrics of oth syn staple fib,<85%,mixed w/cot,>170 g/m2, unbl/bl
5514 21	Plain weave polyester staple fibre fab,<85%,mixd w/cotton,>170g/m2, dyd
5514 22	Twill weave polyester staple fibre fab,<85%,mixd w/cotton,>170g/m2, dyd
5514 23	Woven fabrics of polyester staple fib,<85%,mixed w/cot,>170 g/m2, dyed
5514 29	Woven fabrics of oth synthetic staple fib,<85%,mixd w/cot,>170g/m2, dyd
5514 31	Plain weave polyester staple fib fab,<85% mixd w/cot,>170g/m2, yarn dyd
5514 32	Twill weave polyester staple fib fab,<85% mixd w/cot,>170g/m2, yarn dyd
5514 33	Woven fab of polyester stapl fib,<85% mixd w/cot,>170g/m2, yarn dyd nes
5514 39	Woven fabrics of oth syn staple fib,<85% mixd w/cot,>170 g/m2, yarn dyd
5514 41	Plain weave polyester staple fibre fab,<85%,mixd w/cot,>170g/m2, printd
5514 42	Twill weave polyester staple fibre fab,<85%,mixd w/cot,>170g/m2, printd
5514 43	Woven fab of polyester staple fibres <85%,mixd w/cot,>170g/m2, ptd, nes
5514 49	Woven fabrics of oth syn staple fib,<85%,mixed w/cot,>170 g/m2, printed
5515 11	Woven fab of polyester staple fib mixd w viscose rayon staple fib, nes
5515 12	Woven fabrics of polyester staple fibres mixd w man-made filaments, nes
5515 13	Woven fab of polyester staple fibres mixd w/wool/fine animal hair, nes
5515 19	Woven fabrics of polyester staple fibres, nes
5515 21	Woven fabrics of acrylic staple fibres, mixd w man-made filaments, nes
5515 22	Woven fab of acrylic staple fibres, mixd w/wool/fine animal hair, nes
5515 29	Woven fabrics of acrylic or modacrylic staple fibres, nes
5515 91	Woven fabrics of oth syn staple fib, mixed with man-made filaments, nes
5515 92	Woven fabrics of oth syn staple fib, mixd w/wool o fine animal hair, nes
5515 99	Woven fabrics of synthetic staple fibres, nes
5516 11	Woven fabrics, containg>/=85% of artificial staple fibres; unbleached/bl
5516 12	Woven fabrics, containing>/=85% of artificial staple fibres, dyed
5516 13	Woven fabrics, containing>/=85% of artificial staple fib, yarn dyed
5516 14	Woven fabrics, containing>/=85% of artificial staple fibres, printed
5516 21	Woven fabrics of artificial staple fib,<85%,mixd w man-made fi, unbl/bl
5516 22	Woven fabrics of artificial staple fib,<85%,mixd with man-made fi, dyd
5516 23	Woven fabrics of artificial staple fib,<85%,mixd with m-m fi, yarn dyd
5516 24	Woven fabrics of artificial staple fib,<85%,mixd w man-made fi, printd
5516 31	Woven fab of arti staple fib,<85% mixd w/wool/fine animal hair, unbl/bl
5516 32	Woven fabrics of arti staple fib,<85% mixd w/wool/fine animal hair, dyd
5516 33	Woven fab of arti staple fib,<85% mixd w/wool/fine animl hair, yarn dyd
5516 34	Woven fab of arti staple fib,<85% mixd w/wool/fine animal hair, printd
5516 41	Woven fabrics of artificial staple fib,<85% mixd with cotton, unbl o bl
5516 42	Woven fabrics of artificial staple fib, <85% mixed with cotton, dyed
5516 43	Woven fabrics of artificial staple fib,<85% mixd with cotton, yarn dyd
5516 44	Woven fabrics of artificial staple fib,<85% mixed with cotton, printed
5516 91	Woven fabrics of artificial staple fibres, unbleached or bleached, nes
5516 92	Woven fabrics of artificial staple fibres, dyed, nes
5516 93	Woven fabrics of artificial staple fibres, yarn dyed, nes
5516 94	Woven fabrics of artificial staple fibres, printed, nes
Ch. 56	Wadding, felt & nonwoven; yarns; twine, cordage, etc
5601 10	Sanitary articles of waddg of textile mat i.e. sanitary towels, tampons
5601 21	Wadding of cotton and articles thereof, other than sanitary articles
5601 22	Wadding of man-made fibres and articles thereof, other than sanitary articles
5601 29	Waddg of oth textile materials&articles thereof, other than sanitary articles
5601 30	Textile flock and dust and mill neps

5602 10	Needleloom felt and stitch-bonded fibre fabrics
5602 21	Felt other than needleloom, of wool or fine animal hair, not impreg, ctd, cov etc
5602 29	Felt other than needleloom, of other textile materials, not impreg, ctd, cov etc
5602 90	Felt of textile materials, nes
5603 00	Nonwovens, whether or not impregnated, coated, covered or laminated
5604 10	Rubber thread and cord, textile covered
5604 20	High tenacity yarn of polyest, nylon oth polyamid, viscose rayon, ctd etc
5604 90	Textile yarn, strips&the like, impreg ctd/cov with rubber o plastics, nes
5605 00	Metallisd yarn, beg textile yarn combind w metal thread, strip/powder
5606 00	Gimped yarn nes; chenille yarn; loop wale-yarn
5607 10	Twine, cordage, ropes and cables, of jute or other textile bast fibres
5607 21	Binder o baler twine, of sisal o oth textile fibres of the genus Agave
5607 29	Twine nes, cordage, ropes and cables, of sisal textile fibres
5607 30	Twine, cordage, ropes and cables, of abaca or other hard (leaf) fibres
5607 41	Binder or baler twine, of polyethylene or polypropylene
5607 49	Twine nes, cordage, ropes and cables, of polyethylene or polypropylene
5607 50	Twine, cordage, ropes and cables, of other synthetic fibres
5607 90	Twine, cordage, ropes and cables, of other materials
5608 11	Made up fishing nets, of man-made textile materials
5608 19	Knottd nettg of twine/cordage/rope, and oth made up nets of m-m tex mat
5608 90	Knottd nettg of twine/cordage/rope, nes, and made up nets of oth tex mat
5609 00	Articles of yarn, strip, twine, cordage, rope and cables, nes
Ch. 57	Carpets and other textile floor coverings.
5701 10	Carpets of wool or fine animal hair, knotted
5701 90	Carpets of other textile materials, knotted
5702 10	Kelem, Schumacks, Karamanie and similar textile hand-woven rugs
5702 20	Floor coverings of coconut fibres (coir)
5702 31	Carpets of wool/fine animl hair, of wovn pile constructn, nt made up nes
5702 32	Carpets of man-made textile mat, of wovn pile construct, nt made up, nes
5702 39	Carpets of oth textile mat, of woven pile constructn, nt made up, nes
5702 41	Carpets of wool/fine animal hair, of wovn pile construction, made up, nes
5702 42	Carpets of man-made textile mat, of woven pile construction, made up, nes
5702 49	Carpets of oth textile materials, of wovn pile construction, made up, nes
5702 51	Carpets of wool or fine animal hair, woven, not made up, nes
5702 52	Carpets of man-made textile materials, woven, not made up, nes
5702 59	Carpets of other textile materials, woven, not made up, nes
5702 91	Carpets of wool or fine animal hair, woven, made up, nes
5702 92	Carpets of man-made textile materials, woven, made up, nes
5702 99	Carpets of other textile materials, woven, made up, nes
5703 10	Carpets of wool or fine animal hair, tufted
5703 20	Carpets of nylon or other polyamides, tufted
5703 30	Carpets of other man-made textile materials, tufted
5703 90	Carpets of other textile materials, tufted
5704 10	Tiles of felt of textile materials, havg a max surface area of 0.3 m2
5704 90	Carpets of felt of textile materials, nes
5705 00	Carpets and other textile floor coverings, nes
Ch. 58	Special woven fab; tufted tex fab; lace; tapestries etc
5801 10	Woven pile fabrics of wool/fine animal hair, other than terry&narrow fabrics
5801 21	Woven uncut weft pile fabrics of cotton, other than terry and narrow fabrics
5801 22	Cut corduroy fabrics of cotton, other than narrow fabrics

5801 23	Woven weft pile fabrics of cotton, nes
5801 24	Woven warp pile fab of cotton, pingl (uncut),other than terry&narrow fab
5801 25	Woven warp pile fabrics of cotton, cut, other than terry and narrow fabrics
5801 26	Chenille fabrics of cotton, other than narrow fabrics
5801 31	Woven uncut weft pile fabrics of manmade fibres, other than terry&narrow fab.
5801 32	Cut corduroy fabrics of man-made fibres, other than narrow fabrics
5801 33	Woven weft pile fabrics of man-made fibres, nes
5801 34	Woven warp pile fab of man-made fib, pingl (uncut),other than terry&nar fab
5801 35	Woven warp pile fabrics of man-made fib, cut, other than terry & narrow fabrics
5801 36	Chenille fabrics of man-made fibres, other than narrow fabrics
5801 90	Woven pile fab&chenille fab of other tex mat, other than terry&narrow fabrics
5802 11	Terry towellg & similar woven terry fab of cotton, other than narrow fab, unbl
5802 19	Terry towellg&similar woven terry fab of cotton, other than unbl&other than nar fab
5802 20	Terry towellg&sim woven terry fab of oth tex mat, other than narrow fabrics
5802 30	Tufted textile fabrics, other than products of heading No 57.03
5803 10	Gauze of cotton, other than narrow fabrics
5803 90	Gauze of other textile material, other than narrow fabrics
5804 10	Tulles & other net fabrics, not incl woven, knitted or crocheted fabrics
5804 21	Mechanically made lace of man-made fib, in the piece, in strips/motifs
5804 29	Mechanically made lace of oth tex mat, in the piece, in strips/in motifs
5804 30	Hand-made lace, in the piece, in strips or in motifs
5805 00	Hand-woven tapestries&needle-worked tapestries, whether or not made up
5806 10	Narrow woven pile fabrics and narrow chenille fabrics
5806 20	Narrow woven fab, cntg by wt>/=5% elastomeric yarn/rubber thread nes
5806 31	Narrow woven fabrics of cotton, nes
5806 32	Narrow woven fabrics of man-made fibres, nes
5806 39	Narrow woven fabrics of other textile materials, nes
5806 40	Fabrics consisting of warp w/o weft assembled by means of an adhesive
5807 10	Labels, badges and similar woven articles of textile materials
5807 90	Labels, badges and similar articles, not woven, of textile materials, nes
5808 10	Braids in the piece
5808 90	Ornamental trimmings in the piece, other than knit; tassels, pompons&similar art
5809 00	Woven fabrics of metal thread/of metallisd yarn, for apparel, etc, nes
5810 10	Embroidery without visible ground, in the piece, in strips or in motifs
5810 91	Embroidery of cotton, in the piece, in strips or in motifs, nes
5810 92	Embroidery of man-made fibres, in the piece, in strips or in motifs, nes
5810 99	Embroidery of oth textile materials, in the piece, in strips/motifs, nes
5811 00	Quilted textile products in the piece
Ch. 59	Impregnated, coated, cover/laminated textile fabric etc
5901 10	Textile fabrics coatd with gum, of a kind usd for outer covers of books
5901 90	Tracg cloth; prepared paintg canvas; stiffened textile fab; for hats etc
5902 10	Tire cord fabric made of nylon or other polyamides high tenacity yarns
5902 20	Tire cord fabric made of polyester high tenacity yarns
5902 90	Tire cord fabric made of viscose rayon high tenacity yarns
5903 10	Textile fab impregnatd, ctd, cov, or laminatd w polyvinyl chloride, nes
5903 20	Textile fabrics impregnated, ctd, cov, or laminated with polyurethane, nes
5903 90	Textile fabrics impregnated, ctd, cov, or laminated with plastics, nes
5904 10	Lineoleum, whether or not cut to shape
5904 91	Floor coverings, other than linoleum, with a base of needleloom felt/nonwovens
5904 92	Floor coverings, other than linoleum, with other textile base
5905 00	Textile wall coverings

5906 10	Rubberised textile adhesive tape of a width not exceeding 20 cm
5906 91	Rubberised textile knitted or crocheted fabrics, nes
5906 99	Rubberised textile fabrics, nes
5907 00	Textile fab impreg, ctd, cov nes; paintd canvas (e.g.threatrical scenery)
5908 00	Textile wicks f lamps, stoves, etc; gas mantles&knittd gas mantle fabric
5909 00	Textile hosepiping and similar textile tubing
5910 00	Transmission or conveyor belts or belting of textile material
5911 10	Textile fabrics usd f card clothing, and sim fabric f technical uses
5911 20	Textile bolting cloth, whether or not made up
5911 31	Textile fabrics used in paper-making or similar machines, <650 g/m2
5911 32	Textile fabrics usd in paper-makg or similar mach, weighg >/=650 g/m2
5911 40	Textile straing cloth usd in oil presses o the like, incl of human hair
5911 90	Textile products and articles for technical uses, nes
Ch. 60	Knitted or crocheted fabrics.
6001 10	Long pile knitted or crocheted textile fabrics
6001 21	Looped pile knitted or crocheted fabrics, of cotton
6001 22	Looped pile knitted or crocheted fabrics, of man-made fibres
6001 29	Looped pile knitted or crocheted fabrics, of other textile materials
6001 91	Pile knitted or crocheted fabrics, of cotton, nes
6001 92	Pile knitted or crocheted fabrics, of man-made fibres, nes
6001 99	Pile knitted or crocheted fabrics, of other textile materials, nes
6002 10	Knittd or crochetd tex fab, w</=30 cm,>/=5% of elastomeric/rubber, nes
6002 20	Knitted or crocheted textile fabrics, of a width not exceedg 30 cm, nes
6002 30	Knittd/crochetd tex fab, width > 30 cm,>/=5% of elastomeric/rubber, nes
6002 41	Warp knitted fabrics, of wool or fine animal hair, nes
6002 42	Warp knitted fabrics, of cotton, nes
6002 43	Warp knitted fabrics, of man-made fibres, nes
6002 49	Warp knitted fabrics, of other materials, nes
6002 91	Knitted or crocheted fabrics, of wool or of fine animal hair, nes
6002 92	Knitted or crocheted fabrics, of cotton, nes
6002 93	Knitted or crocheted fabrics, of manmade fibres, nes
6002 99	Knitted or crocheted fabrics, of other materials, nes
Ch. 61	Art of apparel & clothing access, knitted or crocheted.
6101 10	Mens/boys overcoats, anoraks etc, of wool or fine animal hair, knitted
6101 20	Mens/boys overcoats, anoraks etc, of cotton, knitted
6101 30	Mens/boys overcoats, anoraks etc, of man-made fibres, knitted
6101 90	Mens/boys overcoats, anoraks etc, of other textile materials, knitted
6102 10	Womens/girls overcoats, anoraks etc, of wool or fine animal hair, knitted
6102 20	Womens/girls overcoats, anoraks etc, of cotton, knitted
6102 30	Womens/girls overcoats, anoraks etc, of man-made fibres, knitted
6102 90	Womens/girls overcoats, anoraks etc, of other textile materials, knitted
6103 11	Mens/boys suits, of wool or fine animal hair, knitted
6103 12	Mens/boys suits, of synthetic fibres, knitted
6103 19	Mens/boys suits, of other textile materials, knitted
6103 21	Mens/boys ensembles, of wool or fine animal hair, knitted
6103 22	Mens/boys ensembles, of cotton, knitted
6103 23	Mens/boys ensembles, of synthetic fibres, knitted
6103 29	Mens/boys ensembles, of other textile materials, knitted
6103 31	Mens/boys jackets and blazers, of wool or fine animal hair, knitted
6103 32	Mens/boys jackets and blazers, of cotton, knitted

6103 33	Mens/boys jackets and blazers, of synthetic fibres, knitted
6103 39	Mens/boys jackets and blazers, of other textile materials, knitted
6103 41	Mens/boys trousers and shorts, of wool or fine animal hair, knitted
6103 42	Mens/boys trousers and shorts, of cotton, knitted
6103 43	Mens/boys trousers and shorts, of synthetic fibres, knitted
6103 49	Mens/boys trousers and shorts, of other textile materials, knitted
6104 11	Womens/girls suits, of wool or fine animal hair, knitted
6104 12	Womens/girls suits, of cotton, knitted
6104 13	Womens/girls suits, of synthetic fibres, knitted
6104 19	Womens/girls suits, of other textile materials, knitted
6104 21	Womens/girls ensembles, of wool or fine animal hair, knitted
6104 22	Womens/girls ensembles, of cotton, knitted
6104 23	Womens/girls ensembles, of synthetic fibres, knitted
6104 29	Womens/girls ensembles, of other textile materials, knitted
6104 31	Womens/girls jackets, of wool or fine animal hair, knitted
6104 32	Womens/girls jackets, of cotton, knitted
6104 33	Womens/girls jackets, of synthetic fibres, knitted
6104 39	Womens/girls jackets, of other textile materials, knitted
6104 41	Womens/girls dresses, of wool or fine animal hair, knitted
6104 42	Womens/girls dresses, of cotton, knitted
6104 43	Womens/girls dresses, of synthetic fibres, knitted
6104 44	Womens/girls dresses, of artificial fibres, knitted
6104 49	Womens/girls dresses, of other textile materials, knitted
6104 51	Womens/girls skirts, of wool or fine animal hair, knitted
6104 52	Womens/girls skirts, of cotton, knitted
6104 53	Womens/girls skirts, of synthetic fibres, knitted
6104 59	Womens/girls skirts, of other textile materials, knitted
6104 61	Womens/girls trousers and shorts, of wool or fine animal hair, knitted
6104 62	Womens/girls trousers and shorts, of cotton, knitted
6104 63	Womens/girls trousers and shorts, of synthetic fibres, knitted
6104 69	Womens/girls trousers and shorts, of other textile materials, knitted
6105 10	Mens/boys shirts, of cotton, knitted
6105 20	Mens/boys shirts, of man-made fibres, knitted
6105 90	Mens/boys shirts, of other textile materials, knitted
6106 10	Womens/girls blouses and shirts, of cotton, knitted
6106 20	Womens/girls blouses and shirts, of man-made fibres, knitted
6106 90	Womens/girls blouses and shirts, of other materials, knitted
6107 11	Mens/boys underpants and briefs, of cotton, knitted
6107 12	Mens/boys underpants and briefs, of man-made fibres, knitted
6107 19	Mens/boys underpants and briefs, of other textile materials, knitted
6107 21	Mens/boys nightshirts and pyjamas, of cotton, knitted
6107 22	Mens/boys nightshirts and pyjamas, of man-made fibres, knitted
6107 29	Mens/boys nightshirts and pyjamas, of other textile materials, knitted
6107 91	Mens/boys bathrobes, dressing gowns etc of cotton, knitted
6107 92	Mens/boys bathrobes, dressing gowns, etc of man-made fibres, knitted
6107 99	Mens/boys bathrobes, dressg gowns, etc of oth textile materials, knitted
6108 11	Womens/girls slips and petticoats, of man-made fibres, knitted
6108 19	Womens/girls slips and petticoats, of other textile materials, knitted
6108 21	Womens/girls briefs and panties, of cotton, knitted
6108 22	Womens/girls briefs and panties, of man-made fibres, knitted
6108 29	Womens/girls briefs and panties, of other textile materials, knitted
6108 31	Womens/girls nightdresses and pyjamas, of cotton, knitted

6108 32	Womens/girls nightdresses and pyjamas, of man-made fibres, knitted
6108 39	Womens/girls nightdresses & pyjamas, of other textile materials, knitted
6108 91	Womens/girls bathrobes, dressing gowns, etc, of cotton, knitted
6108 92	Womens/girls bathrobes, dressing gowns, etc, of man-made fibres, knitted
6108 99	Women/girls bathrobes, dressg gowns, etc, of oth textile materials, knittd
6109 10	T-shirts, singlets and other vests, of cotton, knitted
6109 90	T-shirts, singlets and other vests, of other textile materials, knitted
6110 10	Pullovers, cardigans&similar article of wool or fine animal hair, knittd
6110 20	Pullovers, cardigans and similar articles of cotton, knitted
6110 30	Pullovers, cardigans and similar articles of man-made fibres, knitted
6110 90	Pullovers, cardigans&similar articles of oth textile materials, knittd
6111 10	Babies garments&clothg accessories of wool or fine animal hair, knitted
6111 20	Babies garments and clothing accessories of cotton, knitted
6111 30	Babies garments and clothing accessories of synthetic fibres, knitted
6111 90	Babies garments&clothg accessories of other textile materials, knitted
6112 11	Track suits, of cotton, knitted
6112 12	Track suits, of synthetic fibres, knitted
6112 19	Track suits, of other textile materials, knitted
6112 20	Ski suits, of textile materials, knitted
6112 31	Mens/boys swimwear, of synthetic fibres, knitted
6112 39	Mens/boys swimwear, of other textile materials, knitted
6112 41	Womens/girls swimwear, of synthetic fibres, knitted
6112 49	Womens/girls swimwear, of other textile materials, knitted
6113 00	Garments made up of impreg, coatd, coverd or laminatd textile knittd fab
6114 10	Garments nes, of wool or fine animal hair, knitted
6114 20	Garments nes, of cotton, knitted
6114 30	Garments nes, of man-made fibres, knitted
6114 90	Garments nes, of other textile materials, knitted
6115 11	Panty hose&tights, of synthetic fibre yarns <67 dtex/single yarn knittd
6115 12	Panty hose&tights, of synthetic fib yarns >/=67 dtex/single yarn knittd
6115 19	Panty hose and tights, of other textile materials, knitted
6115 20	Women full-l/knee-l hosiery, of textile yarn<67 dtex/single yarn knittd
6115 91	Hosiery nes, of wool or fine animal hair, knitted
6115 92	Hosiery nes, of cotton, knitted
6115 93	Hosiery nes, of synthetic fibres, knitted
6115 99	Hosiery nes, of other textile materials, knitted
6116 10	Gloves impregnated, coated or covered with plastics or rubber, knitted
6116 91	Gloves, mittens and mitts, nes, of wool or fine animal hair, knitted
6116 92	Gloves, mittens and mitts, nes, of cotton, knitted
6116 93	Gloves, mittens and mitts, nes, of synthetic fibres, knitted
6116 99	Gloves, mittens and mitts, nes, of other textile materials, knitted
6117 10	Shawls, scarves, veils and the like, of textile materials, knitted
6117 20	Ties, bow ties and cravats, of textile materials, knitted
6117 80	Clothing accessories nes, of textile materials, knitted
6117 90	Parts of garments/of clothg accessories, of textile materials, knittd
Ch. 62	Art of apparel & clothing access, not knitted/crocheted
6201 11	Mens/boys overcoats&similar articles of wool/fine animal hair, not knit
6201 12	Mens/boys overcoats and similar articles of cotton, not knitted
6201 13	Mens/boys overcoats & similar articles of man-made fibres, not knitted
6201 19	Mens/boys overcoats&sim articles of oth textile materials, not knittd
6201 91	Mens/boys anoraks&similar articles, of wool/fine animal hair, not knittd

6201 92	Mens/boys anoraks and similar articles, of cotton, not knitted
6201 93	Mens/boys anoraks and similar articles, of man-made fibres, not knitted
6201 99	Mens/boys anoraks&similar articles, of oth textile materials, not knittd
6202 11	Womens/girls overcoats&sim articles of wool/fine animal hair nt knit
6202 12	Womens/girls overcoats and similar articles of cotton, not knitted
6202 13	Womens/girls overcoats&sim articles of man-made fibres, not knittd
6202 19	Womens/girls overcoats&similar articles of other textile mat, not knit
6202 91	Womens/girls anoraks&similar article of wool/fine animal hair, not knit
6202 92	Womens/girls anoraks and similar article of cotton, not knitted
6202 93	Womens/girls anoraks & similar article of man-made fibres, not knitted
6202 99	Womens/girls anoraks&similar article of oth textile materials, not knit
6203 11	Mens/boys suits, of wool or fine animal hair, not knitted
6203 12	Mens/boys suits, of synthetic fibres, not knitted
6203 19	Mens/boys suits, of other textile materials, not knitted
6203 21	Mens/boys ensembles, of wool or fine animal hair, not knitted
6203 22	Mens/boys ensembles, of cotton, not knitted
6203 23	Mens/boys ensembles, of synthetic fibres, not knitted
6203 29	Mens/boys ensembles, of other textile materials, not knitted
6203 31	Mens/boys jackets and blazers, of wool or fine animal hair, not knitted
6203 32	Mens/boys jackets and blazers, of cotton, not knitted
6203 33	Mens/boys jackets and blazers, of synthetic fibres, not knitted
6203 39	Mens/boys jackets and blazers, of other textile materials, not knitted
6203 41	Mens/boys trousers and shorts, of wool or fine animal hair, not knitted
6203 42	Mens/boys trousers and shorts, of cotton, not knitted
6203 43	Mens/boys trousers and shorts, of synthetic fibres, not knitted
6203 49	Mens/boys trousers and shorts, of other textile materials, not knitted
6204 11	Womens/girls suits, of wool or fine animal hair, not knitted
6204 12	Womens/girls suits, of cotton, not knitted
6204 13	Womens/girls suits, of synthetic fibres, not knitted
6204 19	Womens/girls suits, of other textile materials, not knitted
6204 21	Womens/girls ensembles, of wool or fine animal hair, not knitted
6204 22	Womens/girls ensembles, of cotton, not knitted
6204 23	Womens/girls ensembles, of synthetic fibres, not knitted
6204 29	Womens/girls ensembles, of other textile materials, not knitted
6204 31	Womens/girls jackets, of wool or fine animal hair, not knitted
6204 32	Womens/girls jackets, of cotton, not knitted
6204 33	Womens/girls jackets, of synthetic fibres, not knitted
6204 39	Womens/girls jackets, of other textile materials, not knitted
6204 41	Womens/girls dresses, of wool or fine animal hair, not knitted
6204 42	Womens/girls dresses, of cotton, not knitted
6204 43	Womens/girls dresses, of synthetic fibres, not knitted
6204 44	Womens/girls dresses, of artificial fibres, not knitted
6204 49	Womens/girls dresses, of other textile materials, not knitted
6204 51	Womens/girls skirts, of wool or fine animal hair, not knitted
6204 52	Womens/girls skirts, of cotton, not knitted
6204 53	Womens/girls skirts, of synthetic fibres, not knitted
6204 59	Womens/girls skirts, of other textile materials, not knitted
6204 61	Womens/girls trousers & shorts, of wool or fine animal hair, not knitted
6204 62	Womens/girls trousers and shorts, of cotton, not knitted
6204 63	Womens/girls trousers and shorts, of synthetic fibres, not knitted
6204 69	Womens/girls trousers & shorts, of other textile materials, not knitted
6205 10	Mens/boys shirts, of wool or fine animal hair, not knitted

6205 20	Mens/boys shirts, of cotton, not knitted
6205 30	Mens/boys shirts, of man-made fibres, not knitted
6205 90	Mens/boys shirts, of other textile materials, not knitted
6206 10	Womens/girls blouses and shirts, of silk or silk waste, not knitted
6206 20	Womens/girls blouses & shirts, of wool or fine animal hair, not knitted
6206 30	Womens/girls blouses and shirts, of cotton, not knitted
6206 40	Womens/girls blouses and shirts, of man-made fibres, not knitted
6206 90	Womens/girls blouses and shirts, of other textile materials, not knitted
6207 11	Mens/boys underpants and briefs, of cotton, not knitted
6207 19	Mens/boys underpants and briefs, of other textile materials, not knitted
6207 21	Mens/boys nightshirts and pyjamas, of cotton, not knitted
6207 22	Mens/boys nightshirts and pyjamas, of man-made fibres, not knitted
6207 29	Mens/boys nightshirts & pyjamas, of other textile materials, not knitted
6207 91	Mens/boys bathrobes, dressing gowns, etc of cotton, not knitted
6207 92	Mens/boys bathrobes, dressing gowns, etc of man-made fibres, not knitted
6207 99	Mens/boys bathrobes, dressg gowns, etc of oth textile materials, not knit
6208 11	Womens/girls slips and petticoats, of man-made fibres, not knitted
6208 19	Womens/girls slips & petticoats, of other textile materials, not knitted
6208 21	Womens/girls nightdresses and pyjamas, of cotton, not knitted
6208 22	Womens/girls nightdresses and pyjamas, of man-made fibres, not knitted
6208 29	Womens/girls nightdresses&pyjamas, of oth textile materials, not knitted
6208 91	Womens/girls panties, bathrobes, etc, of cotton, not knitted
6208 92	Womens/girls panties, bathrobes, etc, of man-made fibres, not knitted
6208 99	Womens/girls panties, bathrobes, etc, of oth textile materials, not knittd
6209 10	Babies garments&clothg accessories of wool o fine animal hair, not knit
6209 20	Babies garments and clothing accessories of cotton, not knitted
6209 30	Babies garments & clothing accessories of synthetic fibres, not knitted
6209 90	Babies garments&clothg accessories of oth textile materials, not knittd
6210 10	Garments made up of textile felts and of nonwoven textile fabrics
6210 20	Mens/boys overcoats&similar articles of impreg, ctd, cov etc, tex wov fab
6210 30	Womens/girls overcoats&sim articles, of impreg, ctd, etc, tex wov fab
6210 40	Mens/boys garments nes, made up of impreg, ctd, cov, etc, textile woven fab
6210 50	Womens/girls garments nes, of impregnatd, ctd, cov, etc, textile woven fab
6211 11	Mens/boys swimwear, of textile materials not knitted
6211 12	Womens/girls swimwear, of textile materials, not knitted
6211 20	Ski suits, of textile materials, not knitted
6211 31	Mens/boys garments nes, of wool or fine animal hair, not knitted
6211 32	Mens/boys garments nes, of cotton, not knitted
6211 33	Mens/boys garments nes, of man-made fibres, not knitted
6211 39	Mens/boys garments nes, of other textile materials, not knitted
6211 41	Womens/girls garments nes, of wool or fine animal hair, not knitted
6211 42	Womens/girls garments nes, of cotton, not knitted
6211 43	Womens/girls garments nes, of man-made fibres, not knitted
6211 49	Womens/girls garments nes, of other textile materials, not knitted
6212 10	Brassieres and parts thereof, of textile materials
6212 20	Girdles, panty girdles and parts thereof, of textile materials
6212 30	Corselettes and parts thereof, of textile materials
6212 90	Corsets, braces & similar articles & parts thereof, of textile materials
6213 10	Handkerchiefs, of silk or silk waste, not knitted
6213 20	Handkerchiefs, of cotton, not knitted
6213 90	Handkerchiefs, of other textile materials, not knitted
6214 10	Shawls, scarves, veils and the like, of silk or silk waste, not knitted

6214 20	Shawls, scarves, veils&the like, of wool or fine animal hair, not knitted
6214 30	Shawls, scarves, veils and the like, of synthetic fibres, not knitted
6214 40	Shawls, scarves, veils and the like, of artificial fibres, not knitted
6214 90	Shawls, scarves, veils & the like, of other textile materials, not knitted
6215 10	Ties, bow ties and cravats, of silk or silk waste, not knitted
6215 20	Ties, bow ties and cravats, of man-made fibres, not knitted
6215 90	Ties, bow ties and cravats, of other textile materials, not knitted
6216 00	Gloves, mittens and mitts, of textile materials, not knitted
6217 10	Clothing accessories nes, of textile materials, not knitted
6217 90	Parts of garments or of clothg accessories nes, of tex mat, not knittd
Ch. 63	Other made up textile articles; sets; worn clothing etc
6301 10	Electric blankets, of textile materials
6301 20	Blankets (other than electric) & travelling rugs, of wool or fine animal hair
6301 30	Blankets (other than electric) and travelling rugs, of cotton
6301 40	Blankets (other than electric) and travelling rugs, of synthetic fibres
6301 90	Blankets (other than electric) and travelling rugs, of other textile materials
6302 10	Bed linen, of textile knitted or crocheted materials
6302 21	Bed linen, of cotton, printed, not knitted
6302 22	Bed linen, of man-made fibres, printed, not knitted
6302 29	Bed linen, of other textile materials, printed, not knitted
6302 31	Bed linen, of cotton, nes
6302 32	Bed linen, of man-made fibres, nes
6302 39	Bed linen, of other textile materials, nes
6302 40	Table linen, of textile knitted or crocheted materials
6302 51	Table linen, of cotton, not knitted
6302 52	Table linen, of flax, not knitted
6302 53	Table linen, of man-made fibres, not knitted
6302 59	Table linen, of other textile materials, not knitted
6302 60	Toilet&kitchen linen, of terry towellg or similar terry fab, of cotton
6302 91	Toilet and kitchen linen, of cotton, nes
6302 92	Toilet and kitchen linen, of flax
6302 93	Toilet and kitchen linen, of man-made fibres
6302 99	Toilet and kitchen linen, of other textile materials
6303 11	Curtains, drapes, interior blinds&curtain or bed valances, of cotton, knit
6303 12	Curtains, drapes, interior blinds&curtain/bd valances, of syn fib, knittd
6303 19	Curtains, drapes, interior blinds&curtain/bd valances, oth tex mat, knit
6303 91	Curtains/drapes/interior blinds&curtain/bd valances, of cotton, not knit
6303 92	Curtains/drapes/interior blinds curtain/bd valances, of syn fib, nt knit
6303 99	Curtain/drape/interior blind curtain/bd valance, of oth tex mat, nt knit
6304 11	Bedspreads of textile materials, nes, knitted or crocheted
6304 19	Bedspreads of textile materials, nes, not knitted or crocheted
6304 91	Furnishing articles nes, of textile materials, knitted or crocheted
6304 92	Furnishing articles nes, of cotton, not knitted or crocheted
6304 93	Furnishing articles nes, of synthetic fibres, not knitted or crocheted
6304 99	Furnishg articles nes, of oth textile materials, not knittd o crochetd
6305 10	Sacks&bags, for packg of goods, of jute or of other textile bast fibres
6305 20	Sacks and bags, for packing of goods, of cotton
6305 31	Sacks&bags, for packg of goods, of polyethylene or polypropylene strips
6305 39	Sacks & bags, for packing of goods, of other man-made textile materials
6305 90	Sacks and bags, for packing of goods, of other textile materials
6306 11	Tarpaulins, awnings and sunblinds, of cotton

6306 12	Tarpaulins, awnings and sunblinds, of synthetic fibres
6306 19	Tarpaulins, awnings and sunblinds, of other textile materials
6306 21	Tents, of cotton
6306 22	Tents, of synthetic fibres
6306 29	Tents, of other textile materials
6306 31	Sails, of synthetic fibres
6306 39	Sails, of other textile materials
6306 41	Pneumatic mattresses, of cotton
6306 49	Pneumatic mattresses, of other textile materials
6306 91	Camping goods nes, of cotton
6306 99	Camping goods nes, of other textile materials
6307 10	Floor-cloths, dish-cloths, dusters & similar cleaning cloths, of tex mat
6307 20	Life jackets and life belts, of textile materials
6307 90	Made up articles, of textile materials, nes, including dress patterns
6308 00	Sets consistg of woven fab & yarn, for makg up into rugs, tapestries etc
6309 00	Worn clothing and other worn articles

Textile and clothing products in Chapters 30-49, 64-96

3005 90	Wadding, gauze, bandages and the like
ex 3921 12	)
ex 3921 13	(Woven, knitted or non-woven fabrics coated, covered or laminated with plastics
ex 3921 90	)
ex 4202 12	)
ex 4202 22	(Luggage, handbags and flatgoods with an outer surface predominantly of textile materials
ex 4202 32	)
ex 4202 92	)
ex 6405 20	Footwear with soles and uppers of wool felt
ex 6406 10	Footwear uppers of which 50% or more of the external surface area is textile material
ex 6406 99	Leg warmers and gaiters of textile material
6501 00	Hat-forms, hat bodies and hoods of felt; plateaux and manchons of felt
6502 00	Hat-shapes, plaited or made by assembling strips of any material
6503 00	Felt hats and other felt headgear
6504 00	Hats & other headgear, plaited or made by assembling strips of any material
6505 90	Hats & other headgear, knitted or made up from lace, or other textile material
6601 10	Umbrellas and sun umbrellas, garden type
6601 91	Other umbrella types, telescopic shaft
6601 99	Other umbrellas
ex 7019 10	Yarns of fibre glass
ex 7019 20	Woven fabrics of fibre glass
8708 21	Safety seat belts for motor vehicles
8804 00	Parachutes; their parts and accessories
9113 90	Watch straps, bands and bracelets of textile materials
ex 9404 90	Pillow and cushions of cotton; quilts; eiderdowns; comforters and similar articles of textile materials
9502 91	Garments for dolls
ex 9612 10	Woven ribbons, of man-made fibres, other than those measuring less than 30 mm in width and permanently put up in cartridges

Note:

Actions under the safeguard provisions in Article 6 of this Agreement shall not apply to:

1. developing country's exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textile products, provided that such products are properly certified under arrangements established between the parties concerned;

2. historically traded textiles which were internationally traded in commercially significant quantities prior to 1982, such as bags, sacks, carpetbacking, cordage, luggage, mats, mattings and carpets typically made from fibres such as jute, coir, sisal, abaca, maguey and henequen;

3. products made of pure silk.

ANNEX III

INITIAL ACTION ON THE FIRST DAY OF THE COMING INTO FORCE OF THIS AGREEMENT, ON 1 JANUARY 1992

A. Products to be immediately integrated into GATT

1. [Textile products made of vegetable fibres; blends of vegetable fibres with cotton, man-made fibres and/or wool; and blends containing silk in which any or all of the vegetable fibres and/or silk in combination represent either the chief value of the fibres or 50 per cent or more by weight of the products;

2. Developing country exports of hand-loom fabrics of the cottage industry, or products made of hand-loom fabrics or traditional folklore handicraft textile products;

3. Products other than those included in Section XI (heading 50-63) of the International Convention on the Harmonised Commodity Description and Coding system;

4. Children's clothing up to [size 164];

5. Textile products which are not produced [or which are produced in insignificant quantities] by the domestic producers of the importing parties;

6. All categories [and sub-categories] under specific limits which represent less than X per cent of the total import of such categories [or sub-categories] in the importing countries will be removed from such specific limits. Safeguard measures may be instituted on these categories or sub-categories if the situation warrants.]

B. Restrictions with respect to certain suppliers to be eliminated

1. [Restrictions on textile and clothing exports of suppliers having a de minimis share of 1 per cent or less of total textile and clothing imports in a given market;

2. Restrictions on the least developed countries.]

C. Restrictive practices to be eliminated

1. [(a) Restrictions at aggregate level on imports of all textile products from a particular source;

2. Restrictions at aggregate level on imports of a group of textile products from a particular source;

3. Restrictions on re-imports into a party's territory of textile products which that party has exported to another party's territory for processing, including restrictions described as "special régime", "guaranteed access levels", "outward processing trade" quotas, imports under TSUSA 807 and 807 A and other similar restrictions;

4. Subdivisions of quantitative restrictions among the member states of a customs union.]

ANNEX IV

PROGRESSIVE STAGED ELIMINATION OF RESTRICTIONS ACCORDING TO THE DEGREE OF PROCESSING

[The quantitative restrictions remaining on particular products shall be progressively eliminated in four stages. Each importing party shall eliminate the restrictions on textile products described in Section XI of the Harmonised Commodity Description and Coding System in the respective stages in the manner enumerated below. The duration of stages I and II shall be two years each, and that of III and IV one year each.

TOPS AND YARNS in Stage I including:

Headings 51.05-51.10; 52.04-52.07; 55.06-55.11.

FABRICS in Stage II including:

Headings 51.11-51.13; 52.08-52.12; 52.07; 54.08; 55.12-55.16; Chapter 58: headings 59.01-59.06; ~~59.11; and C~~hapter 60.

MADE UPS in Stage III including:

Chapter 56; 57; headings 59.07-59.10; Chapter 63

CLOTHING in Stage IV including:

Chapters 61 and 62.]

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE II:1(b) OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

This Understanding has been agreed *ad referendum*.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE II:1(b) OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. It is agreed that in order to ensure transparency of the legal rights and obligations deriving from Article II:1(b), the nature and level of any "other duties or charges" levied on bound tariff items, as referred to in that provision, shall be recorded in the Schedules of tariff concessions against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges".

2. The date as of which "other duties or charges" are bound, for the purposes of Article II, shall be the date of the Uruguay Round (1990) Protocol to the General Agreement on Tariffs and Trade. "Other duties or charges" shall therefore be recorded in the Schedules of concessions at the levels applying on this date. At each subsequent renegotiation of a concession or negotiation of a new concession the applicable date for the tariff item in question shall become the date of the incorporation of the new concession in the Schedules of concessions. However, the date of the instrument by which a concession on any particular item was first incorporated into the General Agreement shall also continue to be recorded in column 6 of the Loose-Leaf Schedules.

3. "Other duties or charges" shall be recorded in respect of all tariff bindings.

4. Where a tariff item has previously been the subject of a concession, the level of "other duties or charges" recorded in the Schedules of concessions shall not be higher than the level obtaining at the time of the first incorporation of the concession in the Schedules. It will be open to any contracting party to challenge the existence of an "other duty or charge", on the ground that no such "other duty or charge" existed at the time of the original binding of the item in question, as well as the consistency of the recorded level of any "other duty or charge" with the previously bound level, for a period of three years after the deposit with the secretariat of the Schedule in question.

5. It is agreed that the recording of "other duties or charges" in the Schedules of concessions is without prejudice to their consistency with rights and obligations under the General Agreement other than those affected by paragraph 4 above. All contracting parties retain the right to challenge, at any time, the consistency of any "other duty or charge" with such obligations.

---

*The legal form of this decision will be decided at a later stage.

6. For the purposes of this decision, the normal GATT procedures of consultation and dispute settlement will apply.

7. It is agreed that "other duties or charges" omitted from a Schedule at the time of its deposit with the secretariat shall not subsequently be added to it and that any "other duty or charge" recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the deposit of the Schedule.

8. The decision in paragraph 2 above regarding the date applicable to each concession for the purposes of Article II:1(b) supersedes the decision regarding the applicable date taken by the GATT Council on 26 March 1980 (BISD 27S/22).

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

This Understanding has been agreed *ad referendum*.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XVII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Noting that Article XVII provides for obligations on contracting parties in respect of the activities of the state trading enterprises referred to in Article XVII:1, which are required to be consistent with the general principles of non-discriminatory treatment prescribed in the General Agreement for governmental measures affecting imports or exports by private traders;

Noting further that contracting parties are subject to their GATT obligations in respect of those governmental measures affecting state trading enterprises;

Recognising that this decision is without prejudice to the substantive disciplines prescribed in Article XVII;

1. It is agreed that in order to ensure the transparency of the activities of state trading enterprises, such enterprises shall be notified to the CONTRACTING PARTIES, for review by the working party to be set up under paragraph 5 below, in accordance with the following working definition:

> "Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges, including statutory or constitutional powers, in the exercise of which they influence through their purchases or sales the level or direction of imports or exports."

This notification requirement does not apply to imports of products for immediate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale.

2. It is agreed that each contracting party shall conduct a review of its policy with regard to the submission of notifications on state trading enterprises to the CONTRACTING PARTIES, taking account of the provisions of this decision. In carrying out such a review, each contracting party should have regard to the need to ensure the maximum transparency possible in its notifications so as to permit a clear appreciation of the manner of operation of the enterprises notified and the effect of their operations on international trade.

3. Notifications shall be made in accordance with the 1960 questionnaire on state trading (BISD, 9S/184), it being understood that contracting parties shall notify the enterprises referred to in paragraph 1 above whether or not imports or exports have in fact taken place.

4. Any contracting party which has reason to believe that another contracting party has not adequately met its notification obligation may raise the matter with the contracting party concerned. If the matter is not satisfactorily resolved it may make a counter-notification to the CONTRACTING PARTIES, for consideration by the working party set up under paragraph 5 below, simultaneously informing the contracting party concerned.

5. A working party shall be set up, on behalf of the CONTRACTING PARTIES, to review notifications and counter-notifications. In the light of this review and without prejudice to Article XVII:4(c), the CONTRACTING PARTIES may make recommendations with regard to the adequacy of notifications and the need for further information. The working party shall also review, in the light of the notifications received, the adequacy of the 1960 questionnaire on state trading and the coverage of state trading enterprises notified under paragraph 1 above. It shall also develop an illustrative list showing the kinds of relationships between governments and enterprises, and the kinds of activities, engaged in by these enterprises, which may be relevant for the purposes of Article XVII. It is understood that the GATT secretariat will provide a general background paper for the working party on the operations of state trading enterprises as they relate to international trade. Membership of the working party shall be open to all contracting parties indicating their wish to serve on it. It shall meet before the end of 1991 and thereafter at least once a year. It shall report annually to the CONTRACTING PARTIES.

[BALANCE OF PAYMENTS PROVISIONS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE]

Commentary

It has not yet been decided whether or not to engage in negotiations on this subject.

UNDERSTANDING ON THE INTERPRETATION AND APPLICATION OF ARTICLES XXII AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

The following three main issues are left for resolution at the Brussels Ministerial Meeting:

- The procedure for Council decisions relating to:
  - the establishment of panels (Para. D.1(a))
  - the adoption of panel reports (Para. G.4)
  - the adoption of appellate reports (Para. H.3)
  - authorization of retaliation (Para. L.3)

  The choice to be made is essentially the same at each of the four decision points, i.e. that of the Council deciding "otherwise" or, more specifically, "not to do [x]", and then whether to specify for either of the above that the decision should be "by consensus".

- The non-resort to unilateral measures (Section M)

  As indicated in footnote 5, to Section M, the proposed commitment is linked to other parts of the Understanding. There is a large degree of support for the concept in Section M but there is some concern over the breadth of the commitment. There is general agreement that the matter is one for ministers to address.

- Procedures for non-violation complaints (Section P)

  The main issue is over the scope of Article XXIII:1(b) cases to be included under the paragraph P.1 criteria. For such cases, yet to be clearly defined, the procedures would be largely automatic, either via the panel and appellate procedures or via binding arbitration, or some combination of the two. For all other non-violation cases, there appears to be general acceptance that the procedure set out in paragraph P.7 would apply.

UNDERSTANDING ON THE INTERPRETATION AND APPLICATION OF ARTICLES XXII AND XXIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE[1,2]

Following the meeting of the Trade Negotiations Committee at Ministerial level in December 1990, the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade

Approve the improvements to the GATT dispute settlement rules and procedures set out in this Understanding.

A. General Provisions

1. A full review of GATT dispute settlement rules and procedures shall be completed within four years after entry into force of this Understanding, and a decision shall be taken on the occasion of the 1994 meeting at Ministerial level whether to continue, modify or terminate such dispute settlement rules and procedures.

2. The dispute settlement system of GATT is a central element in providing security and predictability to the multilateral trading system. Contracting parties recognize that it serves to preserve the rights and obligations of contracting parties under the General Agreement, and to clarify the existing provisions of the General Agreement [in accordance with the rules and practice of international law]. Contracting parties agree that recommendations and rulings under Article XXIII cannot add to or diminish the rights and obligations provided in the General Agreement.

3. Contracting parties agree that all solutions to matters formally raised under the GATT dispute settlement system under Articles XXII, XXIII and arbitration awards shall be consistent with the General Agreement and shall not nullify or impair benefits accruing to any contracting party under the General Agreement, nor impede the attainment of any objective of the General Agreement.

---

[1] A determination has to be made on the entry into force and application of this Understanding, and on the continuation of the dispute settlement procedures covered by the Decision of the Council of 12 April 1989 (BISD 36S/61) until the date of application of this Understanding.

[2] It should be noted that existing dispute settlement procedures, including provisions about full consensus, have not been recorded where bracketed alternatives appear, even though certain delegations have expressed a preference for the maintenance of these procedures in some instances.

4. Mutually agreed solutions to matters formally raised under GATT Articles XXII and XXIII must be notified to the Council[1] where any contracting party may raise any point relating thereto.

5. All the points set out in this Understanding shall be applied without prejudice to any provision on special and differential treatment for developing contracting parties in the existing instruments on dispute settlement including the CONTRACTING PARTIES' Decision of 5 April 1966 (BISD 14S/18).

6. Where these GATT rules and procedures provide for the Council to take a decision, it shall do so by the traditional practice of consensus. The procedures foreseen in GATT dispute settlement are without prejudice to the application of the provisions of Article XXV of the General Agreement.

B. Consultations

1. If a request is made under Article XXII:1 or XXIII:1, the contracting party to which the request is made shall, unless otherwise mutually agreed, reply to the request within ten days after its receipt and shall enter into consultations in good faith within a period of no more than thirty days from the date of the request, with a view to reaching a mutually satisfactory solution. If the contracting party does not respond within ten days, or does not enter into consultations within a period of no more than thirty days, or a period otherwise mutually agreed, from the date of the request, then the contracting party that requested the holding of consultations may proceed directly to request the establishment of a panel.

2. If the consultations under Article XXII:1 or XXIII:1 fail to settle a dispute within sixty days after the request for consultations, the complaining party may request the establishment of a panel under Article XXIII:2. The complaining party may request a panel during the sixty-day period if the parties jointly consider that consultations have failed to settle the dispute.

3. Requests for consultations under Article XXII:1 or XXIII:1 shall be notified to the Council by the party which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request.

4. In cases of urgency, including those which concern perishable goods, parties shall enter into consultations within a period of no more than ten days from the date of the request. If the consultations have

---

[1] The Council is empowered to act for the CONTRACTING PARTIES, in accordance with normal GATT practice.

failed to settle the dispute within a period of twenty days after the request, the complaining party may request the establishment of a panel.

5. In cases of urgency, including those which concern perishable goods, the parties concerned, panels and the appellate body shall make every effort to accelerate the proceedings to the greatest extent possible.

C. Good Offices, Conciliation, Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree. They may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once terminated, the complaining party can then proceed with a request for the establishment of a panel under Article XXIII:2. When good offices, conciliation or mediation are entered into within sixty days of a request for consultations, the complaining party must allow a period of sixty days from the date of the request for consultations before requesting the establishment of a panel. The complaining party may request a panel during the sixty days if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.

2. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.

3. The Director-General may, acting in an *ex officio* capacity, offer his good offices, conciliation or mediation with the view to assisting contracting parties to settle a dispute.

D. Panel Procedures

1. Establishment of a Panel

(a) If the complaining party so requests, a panel shall be established at the latest at the Council meeting [following that] at which the request first appears as an item on the Council's regular agenda, unless at that meeting the Council decides [otherwise] [by consensus] [not to establish a panel].

(b) The request for a panel shall be made in writing. It shall indicate whether consultations were held, and provide a brief summary of the factual and legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

2. Standard Terms of Reference

(a) Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within twenty days from the establishment of the panel:

> "To examine, in the light of the relevant GATT provisions, the matter referred to the CONTRACTING PARTIES by (name of contracting party) in document DS/... and to make such findings as will assist the CONTRACTING PARTIES in making the recommendations or in giving the rulings provided for in Article XXIII:2".

(b) In establishing a panel, the Council may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties subject to the provisions of the preceding paragraph. The terms of reference thus drawn up shall be circulated to all contracting parties. If other than standard terms of reference are agreed upon, any contracting party may raise any point relating thereto in the Council.

3. Composition of Panels

(a) Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a GATT panel, served as a representative to the GATT or in the GATT Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a contracting party.

(b) The roster of panelists, established through the decision by the CONTRACTING PARTIES on 30 December 1984 (BISD, 31S/9), shall be expanded and improved. To this end, contracting parties may suggest names of individuals possessing the qualifications outlined in paragraph (a) above to serve on panels and shall provide relevant information on their knowledge of international trade and of the GATT.

(c) Contracting parties shall undertake, as a general rule, to permit their representatives to serve as panel members.

(d) Panels shall be composed of three members unless the parties to the dispute agree, within ten days from the establishment of the panel, to a panel composed of five members.

(e) If there is no agreement on the members within twenty days from the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the Council, shall form the panel by appointing the panelists whom he considers most appropriate, after consulting both parties. The Director-General shall inform the contracting parties of the composition of the panel thus formed no later than ten days from the date he receives such a request.

4. Procedures for Multiple Complainants

(a) Where more than one contracting party requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all parties concerned. A single panel should be established to examine such complaints whenever feasible.

(b) The single panel will organize its examination and present its findings to the Council so that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel will submit separate reports on the dispute concerned. The written submissions by each of the complainants will be made available to the other complainants, and each complainant will have the right to be present when one of the other complainants presents its view to the panel.

(c) If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

5. Interim Review Stage

(a) Following the consideration of rebuttal submissions and oral arguments, the panel shall submit the descriptive (factual and argument) sections of its draft report to the parties. Within a period of time set by the panel, the parties shall submit their comments in writing.

(b) Following the deadline for receipt of comments from the parties, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Council. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the contracting parties.

(c) The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time period set out in paragraph D.6(e).

6. Various Stages of a Panel

(a) Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.

(b) Panels shall follow the Suggested Working Procedures found in the July 1985 note of the Office of Legal Affairs (annexed hereto) unless the members of the panel agree otherwise after consulting the parties to the dispute. After consulting the parties, the panel members shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process at least until its first substantive meeting.

(c) In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.

(d) Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in the second paragraph of this section and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.

(e) In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the time the composition and terms of reference of the panel have been agreed upon to the time when the final report is provided to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to provide its report to the parties within three months.

(f) When the panel considers that it cannot provide its report within six months, or within three months in cases of urgency, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case [should/shall] the period from the establishment of the panel to the ~~submission of~~ the report to the contracting parties exceed nine months.

(g) In the context of consultations involving a measure taken by a developing contracting party, the parties may agree to extend the periods established in paragraphs B.2 and B.4. If, after the relevant period has elapsed, the parties cannot agree that the consultations have concluded, the Chairman of the Council shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing contracting party, the panel shall accord sufficient time for the developing contracting party to prepare and present its argumentation. The provisions of paragraph G.4 are not affected by any action pursuant to this paragraph.

(h) Where one or more of the parties is a developing contracting party, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing countries that form part of the General Agreement and of the instruments negotiated in GATT under its auspices, which have been raised by the developing contracting party in the course of the dispute settlement procedures.

E. Third Contracting Parties

1. The interests of the parties to a dispute and those of other contracting parties shall be fully taken into account during the panel process.

2. Any third contracting party having a substantial interest in a matter before a panel, and having notified this to the Council, shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Such third parties shall receive submissions of the parties for the first meeting of the panel.

4. If a third party considers a measure already the subject of a panel nullifies or impairs benefits accruing to it under the General Agreement, that party may have recourse to normal GATT dispute settlement procedures. Such a dispute shall be referred to the original panel wherever possible.

F. Panel and Appellate Body Recommendations

Where a panel or the appellate body concludes that a measure is inconsistent with the General Agreement, it shall recommend that the contracting party concerned bring the measure into conformity with the General Agreement. [In cases involving non-violation nullification or impairment, the panel or appellate body shall recommend that the contracting party concerned [consider ways and means of making] [make] a satisfactory adjustment.] In addition to its recommendations, the panel or appellate body may suggest ways in which the contracting party concerned could implement the recommendations.

G. Adoption of Panel Reports

1. In order to provide sufficient time for the members of the Council to consider panel reports, the reports shall not be considered for adoption by the Council until twenty days after they have been issued to the contracting parties.

2. Contracting parties having objections to panel reports shall give written reasons to explain their objections for circulation at least ten days prior to the Council meeting at which the panel report will be considered.

3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the Council, and their views shall be fully recorded.

4. Within sixty days of the issuance of a panel report to the contracting parties, the report shall be adopted at a Council meeting unless one of the parties formally notifies the Council of its decision to appeal or the Council decides [otherwise] [by consensus] [not to adopt the report]. If a party has notified its intention to appeal, the report by the panel shall not be considered for adoption by the Council until after completion of the appeal. This adoption procedure is without prejudice to the right of contracting parties to express their views on a panel report.

H. Appellate Review

1. Standing Appellate Body

(a) A standing appellate body shall be established by the CONTRACTING PARTIES. The body shall hear appeals from panel cases. The appellate body shall be composed of a pool of seven members, three of whom shall serve on any one case. Members of the pool shall serve in rotation.

(b) Members shall be appointed by the CONTRACTING PARTIES to serve for a four-year term. Vacancies shall be filled as they arise using the aforesaid procedure.

(c) Members shall be persons of recognized authority, with demonstrated expertise in law, international trade and GATT matters generally. They shall be unaffiliated with any government. The appellate body membership shall be broadly representative of membership in GATT. Members shall be available at all times and on short notice, and shall stay abreast of GATT activities. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

(d) Only parties to the dispute, not third parties, may appeal a panel decision or participate in the appellate review.

(e) As a general rule, the proceedings shall not exceed sixty days from the date a party formally notifies its intent to appeal to the date the appellate body issues its decision. When the appellate body considers that it cannot provide its report within sixty days, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case [shall/should] the proceedings exceed ninety days.

(f) An appeal shall be limited to issues of law covered in the panel report and legal interpretation developed by the panel.

(g) The appellate body shall be provided with appropriate administrative and legal support as it requires.

2. Procedures for Appellate Review

(a) Suggested working procedures shall be drawn up by the appellate body in consultation with the chairman of the Council and the Director-General, and communicated to the contracting parties for their information.

(b) The proceedings of the appellate body shall be confidential.

(c) The appellate body shall address each of the issues raised by the parties to the dispute during the appellate proceeding.

(d) The appellate body may uphold, modify or reverse the legal findings and conclusions of the panel.

3. Adoption of Appellate Reports

An appellate report shall be adopted by the Council and unconditionally accepted by the parties to the dispute unless the Council decides [otherwise] [by consensus] [not to adopt the appellate report] within thirty days following its issuance to the contracting parties. This adoption procedure is without prejudice to the right of contracting parties to express their views on an appellate report.

I. Ex Parte Communications

No ex parte communications are permitted between the panel or appellate body and the parties to the dispute concerning matters under consideration by the panel or appellate body.

J. Time-Frame for Council Decisions

Unless agreed to by the parties, the period from the request under Article XXII:1 or Article XXIII:1 until the Council considers the panel or appellate report for adoption shall not as a general rule exceed twelve months where the report is not appealed or fifteen months where the report is appealed. Where either the panel or the appellate body has acted, pursuant to paragraph D.6(f) or H.1(e), to extend the time of providing its report, the additional time taken shall be added to the above periods.

K. Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the CONTRACTING PARTIES under Article XXIII is essential in order to ensure effective resolution of disputes to the benefit of all contracting parties.

2. At a Council meeting held within thirty days of the adoption of the panel or appellate body report, the contracting party concerned shall inform the Council of its intentions in respect of implementation of the recommendations and rulings under Article XXIII:2. If it is impracticable to comply immediately with the recommendations and rulings, the contracting party concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:

(a) the period of time proposed by the contracting party concerned, provided that such period is approved by the Council; or, in the absence of such approval,

(b) a period of time mutually agreed by the parties to the dispute within forty-five days following adoption of the recommendations and rulings; or, in the absence of such agreement,

(c) a period of time determined through binding arbitration within ninety days following adoption of the recommendations and rulings.

3. Except where the panel or the appellate body has extended, pursuant to paragraph D.6(f) or H.1(e), the time of providing its report, the period from the request under Article XXII:1 or XXIII:1 until the determination of the reasonable period of time shall not exceed eighteen months unless the parties agree otherwise. Where either the panel or the appellate body has acted to extend the time of providing its report, the additional time taken shall be added to the eighteen-month period; provided that [in no event shall the total amount of time] [unless there are exceptional circumstances, the total time shall not] exceed twenty-one months.

4. Where there is disagreement as to the existence or GATT consistency of measures taken to comply with the recommendations and rulings under Article XXIII:2, such dispute shall be decided through recourse to GATT dispute settlement procedures, involving resort to the original panel wherever possible. The panel shall issue its decision within ninety days of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the Council in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

5. The Council shall monitor the implementation of recommendations or rulings adopted under Article XXIII:2. The issue of implementation of the recommendations or rulings may be raised at the Council by any contracting party at any time following their adoption. Unless the Council decides otherwise, the issue of implementation of the recommendations or rulings shall be on the agenda of the Council meeting after six months following their adoption and shall remain on the Council's agenda until the issue is resolved. At least ten days prior to each such Council meeting, the contracting party concerned shall provide the Council with a status report in writing of its progress in the implementation of the recommendations or rulings.

6. In cases brought by developing contracting parties, the Council shall consider what further action it might take which would be appropriate to the circumstances, in conformity with paragraphs 21 and 23 of the 1979 Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/214).

L. Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings under Article XXIII:2 are not implemented within a reasonable period of time. Compensation within GATT is voluntary and shall be applied on a most-favoured-nation basis.

2. If the contracting party concerned fails to bring the measure found to be inconsistent with the General Agreement into compliance therewith or otherwise comply with the recommendations and rulings under Article XXIII:2 within the reasonable period of time, such party shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party to the dispute, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within twenty days after the expiry of the reasonable period of time, any party to the dispute may request authorization from the Council to suspend the application to the contracting party concerned of concessions or other obligations under the General Agreement.

3. When the situation described in paragraph 2 above occurs, the Council, upon request, shall grant authorization to suspend concessions or other obligations within thirty days of the expiry of the reasonable period of time unless the Council decides [otherwise] [by consensus] [to reject the request]. However, if the party concerned objects to the level of suspension proposed, the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator[1] appointed by the Director-General, and shall be completed within sixty days of the expiry of the reasonable period of time. Concessions or other obligations shall not be suspended pending the outcome of the arbitration.

4. The amount of trade covered by the suspension of concessions or other obligations authorized by the Council or determined by arbitration shall be appropriate in the circumstances.

5. The arbitrator shall not examine the nature of the suspended concessions or other obligations, but shall determine whether the amount of trade covered is appropriate in the circumstances. The parties shall accept the arbitrator's determination as final.

6. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with the General Agreement has been removed, or the contracting party that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached.

[7. The amount of suspension [may] [shall, if requested by one of the parties] be determined before expiry of the reasonable period of time, in accordance with the relevant procedures under paragraph L.3 above, and on the understanding that such suspension shall not come into effect before the expiry of the reasonable period of time.]

---

[1] The expression "arbitrator" shall be interpreted as referring either to an individual or a body.

M. Strengthening of Multilateral System

The contracting parties shall: (i) abide by GATT dispute settlement rules and procedures; (ii) abide by the recommendations, rulings and decisions of the CONTRACTING PARTIES; (iii) not resort to unilateral measures or the threat of unilateral measures inconsistent with GATT rules and procedures[1]; and (iv) for the purposes of (iii), undertake to adapt their domestic trade legislation and enforcement procedures in a manner ensuring the conformity of all measures with GATT dispute settlement procedures.

N. Special Procedures involving Least-Developed Contracting Parties

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed contracting party, particular consideration shall be given to the special situation of least-developed countries.

2. In dispute settlement cases involving a least-developed contracting party where a satisfactory solution has not been found in the course of consultations under Article XXII:1 or XXIII:1, the Director-General shall, upon request by a least-developed contracting party, offer his good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General, in providing the above assistance, may consult any source which he deems appropriate.

O. Arbitration

1. Expeditious arbitration within GATT as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.

2. Resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all contracting parties sufficiently in advance of the actual commencement of the arbitration process.

---

[1] This proposed commitment is linked to other parts of this Understanding concerning: (a) an agreement not to oppose the establishment of a panel or the adoption of panel or appellate body reports; (b) an agreement not to retain measures found inconsistent with the General Agreement, or to fail to remedy other measures found to nullify or impair benefits under the General Agreement, beyond the "reasonable period" for compliance; and (c) an agreement not to oppose authorization for the affected party to suspend concessions or other obligations if non-compliance continues after the expiration of the "reasonable period".

3. Other contracting parties may become party to an arbitration proceeding upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the Council where any contracting party may raise any point relating thereto.

4. The provisions on implementation and surveillance shall apply _mutatis mutandis_ to arbitration awards.

P. Non-Violation Complaints

1.

> Option a: The general dispute settlement procedures shall apply, subject to the following qualifications, in the case of complaints that a [reasonable] [legitimate] expectation by a complaining party in respect of a benefit accruing to it through the operation of a market access concession [or other commitment] [, other obligation,] [or derogation [under Article XXV] therefrom], has been frustrated by the introduction or intensification of a measure, not in conflict with the General Agreement, [upsetting the conditions of competition] [having an adverse effect on trade], and thereby nullifying or impairing a GATT benefit.
>
> Option b: Without prejudice to the scope of Articles XXII and XXIII of the General Agreement, the general dispute settlement procedures shall apply, [including panel and appellate procedures], [except that binding arbitration should replace panel and appellate procedures] in the case of complaints that a legitimate expectation by a complaining party in respect of a benefit accruing to it through the operation of a market access concession [or other commitment] [, other obligation, or derogation [under Article XXV] therefrom,] has been frustrated by the unforeseeable introduction or intensification of a measure, not in conflict with the General Agreement, [upsetting the conditions of competition] [having an adverse effect on trade], and thereby nullifying or impairing a GATT benefit.

2. The complaining contracting party shall present a detailed justification in support of any complaint made pursuant to the procedures of paragraph 1 above.

3.

> Option a: If the parties to a dispute agree that the dispute concerns nullification or impairment as described in paragraph 1 above, they shall have immediate recourse to consultations, and should they not reach a mutually satisfactory solution within thirty days, to the normal panel and appellate procedures for a determination on whether there has been nullification or impairment and thereafter to binding arbitration for a ruling on the value of any benefits which have been nullified or impaired.

If the parties to a dispute do not agree that theirs is a non-violation dispute, they shall have recourse to the normal panel and appellate procedures for decisions on whether there has been an infringement of GATT rules and whether there has been nullification or impairment as described in paragraph 1 above. Should it be found that there has been nullification or impairment despite the absence of an infringement of GATT rules, the parties shall have immediate recourse to consultations, and should they not reach a mutually satisfactory solution within thirty days, to binding arbitration on the value of any benefits which have been nullified or impaired.

Option b: Upon request by one or both parties, [the panel and appellate body] [the arbitration body] shall give a binding ruling on the value of benefits which have been nullified or impaired and on possible ways and means of achieving a mutually satisfactory solution.

4. If the parties cannot agree upon an arbitrator by the conclusion of the consultations referred to in paragraph 3 above, the arbitrator shall be appointed by the Director-General, after consulting both parties, within ten days after the end of the consultation period.

5. Any arbitration award, and any mutually agreed solutions in these cases, shall be notified to the Council.

6. Where a measure has been found to constitute a case of nullification or impairment of benefits under the General Agreement without violation thereof, there is no obligation to withdraw or modify such a measure.

7. All non-violation complaints not covered by paragraph 1 above, including those under Article XXIII:1(c), shall be referred to the Council for appropriate action. If there is no agreement as to whether the complaint falls under paragraph 1 or this paragraph, then the procedures of paragraph 3 shall apply to elicit a determination on this point.

Q. Technical Assistance

1. While the Secretariat assists contracting parties in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing contracting parties. To this end, the Secretariat shall make available a qualified legal expert within the Technical Co-operation Division to any developing contracting party which so requests. This expert shall assist the developing contracting party in a manner ensuring the continued impartiality of the Secretariat.

2. The Secretariat shall conduct special training courses for interested contracting parties concerning GATT dispute settlement procedures and practices so as to enable contracting parties' experts to be better informed in this regard.

Annex

Suggested Working Procedures

1. In its proceedings the Panel will be guided by the relevant provisions of the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance (BISD 26S/210); of the 1982 Ministerial Declaration (BISD 29S/13); and of the Decisions on dispute settlement procedures adopted by the CONTRACTING PARTIES in November 1984 (L/5718) and in April 1989 (BISD 36S/61). In addition, the following guidelines will apply.

2. The Panel will meet in closed session. The Parties to the dispute, or other interested Parties, will be present at the meetings only when invited by the Panel to appear before it.

3. The deliberations of the Panel and the documents submitted to it will be kept confidential. For the duration of the Panel proceeding, the Parties to the dispute are requested not to release any papers or make any statements in public regarding the dispute.

4. Before the first substantive meeting of the Panel with the Parties, both Parties to the dispute are expected to transmit to the Panel written submissions in which they present the facts of the case and their arguments.

5. At its first substantive meeting with the parties, the Panel will ask the Party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the Party against which the complaint has been brought will be asked to present its point of view.

6. As it may be necessary for the Parties to have time to prepare their formal rebuttals, the latter will be made at a second substantive meeting of the Panel. The Party complained against will have the right to take the floor first to be followed by the complaining Party. Both Parties are encouraged to submit, prior to that meeting, written briefs to the Panel.

7. The Panel may at any time put questions to the Parties and ask them for explanations either in the course of a meeting with the Parties or in writing.

8. The Parties to the dispute and any third contracting party invited to present its views in accordance with paragraph 15 of the 1979 Understanding (BISD 29S/213) and section F(e) of the April 1989 Decision (BISD 36S/61) are encouraged to make available to the Panel a written version of their oral statements.

9. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 8 above will be made in the presence of both Parties. Moreover, each Party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the Panel, will be made available to the other Party.

10. Any additional procedures specific to the Panel.

11. The Panel proposes the following timetable for its work:

(a) Receipt of first written submissions of the Parties:		3-6 weeks
(1) complaining Party:	______	
(2) Party complained against:	______	2-3 weeks
(b) Date, time and place of first substantive meeting with the Parties:	______	1-2 weeks
(c) Receipt of written rebuttals of the Parties:	______	2-3 weeks
(d) Date, time and place of second substantive meeting with the Parties:	______	1-2 weeks
(e) Submission of descriptive part of the report to the Parties:	______	3-6 weeks
(f) Receipt of comments by the Parties on the descriptive part of the report:	______	2 weeks
(g) Submission of the final report, including the findings and conclusions, to the Parties:	______	2-6 weeks
(h) Circulation of the report to the CONTRACTING PARTIES:	______	2-4 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the Parties will be scheduled if required.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

Certain participants maintained reservations regarding this Understanding: in one case because of concerns relating to its provisions on XXIV:6 and XXIV:12; in another case because of concerns relating to its provisions on XXIV:12; and in a third case on the ground that the Understanding does not adequately address what was perceived to be a trend away from multilateralism and towards regional trading arrangements. This text has therefore been forwarded to the Trade Negotiations Committee by the Chairman of the Negotiating Group on GATT Articles on his own responsibility. In doing so he indicated that he believed it possible to agree on this text, which in his view represented a reasonable balance between the interests involved.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXIV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Preamble

The CONTRACTING PARTIES

Having regard to the provisions of Article XXIV of the General Agreement;

Recognising that customs unions and free trade areas have greatly increased in number and importance since the establishment of the GATT, and today cover a significant proportion of world trade;

Recognising the contribution to the expansion of world trade that may be made by closer integration between the economies of the parties to such agreements;

Recognising also that such contribution is increased if the elimination between the constituent territories of duties and other restrictive regulations of commerce extends to all trade, and diminished if any major sector of trade is excluded;

Reaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other contracting parties;

Convinced also of the need to reinforce the effectiveness of the role of the CONTRACTING PARTIES in reviewing agreements notified under Article XXIV, by clarifying the criteria and procedures for the assessment of new or enlarged agreements, and improving the transparency of all Article XXIV agreements;

Recognising the need for a common understanding of the obligations of contracting parties under Article XXIV:12;

Agree as follows:

1. Customs unions, free trade areas, and interim agreements leading to the formation of a customs union or free trade area, to be consistent with Article XXIV, must satisfy the provisions of its paragraphs 5, 6, 7 and 8 *inter alia*.

Article XXIV:5

2. The evaluation under Article XXIV:5(a) of the general incidence of the duties and other regulations of commerce applicable before and after the formation of a customs union shall in respect of duties and charges be based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff line basis and in values and quantities, broken down by GATT country of origin. The GATT secretariat shall compute the weighted average tariff rates and customs duties collected in accordance with the methodology used in the assessment of tariff offers in the Uruguay Round. For this purpose, the duties and charges to be taken into consideration shall be the applied rates of duty. It is recognised that for the purpose of the overall assessment of the incidence of other regulations of commerce for which quantification and aggregation are difficult, the examination of individual measures, regulations, products covered and trade flows affected may be required.

3. The 'reasonable length of time' referred to in Article XXIV:5(c) should exceed ten years only in exceptional cases. In cases where contracting parties believe that ten years would be insufficient they shall provide a full explanation to the CONTRACTING PARTIES of the need for a longer period.

Article XXIV:6

4. Paragraph 6 of Article XXIV establishes the procedure to be followed when a contracting party forming a customs union proposes to increase a bound rate of duty. In this regard it is reaffirmed that the procedure set forth in Article XXVIII, as elaborated in the guidelines adopted by the CONTRACTING PARTIES on 10 November 1980 (27S/26) and in the 1990 Decision on Article XXVIII, Modification of Schedules, of the CONTRACTING PARTIES, must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union or an interim agreement leading to the formation of a customs union.

5. It is agreed that these negotiations will be entered into in good faith with a view to achieving mutually satisfactory compensatory adjustment. In such negotiations, as required by Article XXIV:6, due account shall be taken of reductions of duties on the same tariff line made by other constituents of the customs union upon its formation. Should such reductions not be sufficient to provide the necessary compensatory adjustment, the customs union would offer compensation, which may take the form of reductions of duties on other tariff lines. Such an offer shall be taken into consideration by the contracting parties having negotiating rights in the binding being modified or withdrawn. Should the compensatory adjustment remain unacceptable, negotiations should be continued. Where, despite such efforts, agreement in negotiations on compensatory adjustment under Article XXVIII cannot be reached within a reasonable period from the initiation of negotiations, the customs union shall, nevertheless, be free to modify or withdraw the concessions; affected contracting parties shall then be free to withdraw substantially equivalent concessions in accordance with Article XXVIII.

6. The General Agreement imposes no obligation on contracting parties benefiting from a reduction of duties consequent upon the formation of a customs union, or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its members.

Review of Customs Unions and Free Trade Areas

7. All notifications made under Article XXIV:7(a) shall be examined by a working party in the light of the relevant provisions of the General Agreement and of paragraph 1 of this Decision. The working party shall submit a report to the CONTRACTING PARTIES on its findings in this regard. The CONTRACTING PARTIES may make such recommendations to contracting parties as they deem appropriate.

8. In regard to interim agreements, the working party may in its report make appropriate recommendations on the proposed timeframe and on measures required to complete the formation of the customs union or free trade area. It may if necessary provide for further review of the agreement.

9. Substantial changes in the plan and schedule included in an interim agreement shall be notified, and shall be examined by the CONTRACTING PARTIES if so requested.

10. Should an interim agreement notified under Article XXIV:7(a) not include a plan and schedule, contrary to Article XXIV:5(c), the working party shall in its report recommend such a plan and schedule. The parties shall not maintain or put into force, as the case may be, such agreement if they are not prepared to modify it in accordance with these recommendations. Provision shall be made for subsequent review of the implementation of the recommendations.

11. Customs unions and members of free trade areas shall report periodically to the CONTRACTING PARTIES, as envisaged by the CONTRACTING PARTIES in their instruction to the GATT Council concerning reports on regional agreements (18S/38), on the operation of the relevant agreement. Any significant changes and/or developments in the agreements should be reported as they occur.

Dispute Settlement

12. The dispute settlement provisions of the General Agreement may be invoked with respect to any matters arising from the application of those provisions of Article XXIV relating to customs unions, free trade areas or interim agreements leading to the formation of a customs union or free trade area.

Article XXIV:12

13. Each contracting party is fully responsible under the General Agreement for the observance of all provisions of the General Agreement, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.

14. The dispute settlement provisions of the General Agreement may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a contracting party. When the CONTRACTING PARTIES have ruled that a provision of the General Agreement has not been observed, the responsible contracting party shall take such reasonable measures as may be available to it to ensure its observance. The provisions relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.

15. Each contracting party undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another contracting party concerning measures affecting the operation of the General Agreement taken within the territory of the former.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

A decision has to be taken on the date to be inserted in paragraph 4 of this text. This will be the date by which existing waivers, unless extended in accordance with the procedures laid down in the Understanding, will be terminated.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. It is agreed that a request for a waiver or for an extension of an existing waiver shall describe the measures which the contracting party proposes to take, the specific policy objectives which the contracting party seeks to pursue and the reasons which prevent the contracting party from achieving its policy objectives by measures consistent with its obligations under the General Agreement.

2. A decision by the CONTRACTING PARTIES granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate.

3. Any waiver granted for a period of more than one year shall be reviewed by the CONTRACTING PARTIES not later than one year after it was granted, and thereafter annually until the waiver terminates. In each review, the CONTRACTING PARTIES shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The CONTRACTING PARTIES, on the basis of the annual review, may extend, modify or terminate the waiver.

4. Any waiver in effect on the date of this Decision shall terminate, unless extended in accordance with the procedures above, on the date of its expiry or [ ] year[s] from the date of this Decision, whichever is earlier.

5. Any contracting party considering that a benefit accruing to it under the General Agreement is being nullified or impaired as a result of

   (a) the failure of the contracting party to whom a waiver was granted to observe the terms or conditions of the waiver, or

   (b) the application of a measure consistent with the terms and conditions of the waiver

may invoke the provisions of Article XXIII.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

This Understanding has been agreed *ad referendum*.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXVIII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

1. For the purposes of modification or withdrawal of a concession, the contracting party which has the highest ratio of exports affected by the concession (i.e exports of the product to the market of the country modifying or withdrawing the concession) to its total exports shall be deemed to have a principal supplying interest if it does not already have an initial negotiating right or a principal supplying interest as provided for in Article XXVIII:1. It is however agreed that this paragraph will be reviewed five years from the date of this decision by the Committee on Tariff Concessions with a view to deciding whether this criterion has worked satisfactorily in securing a redistribution of negotiating rights in favour of small and medium-sized exporting contracting parties. If this is not the case consideration will be given to possible improvements, including, in the light of the availability of adequate data, the adoption of a criterion based on the ratio of exports affected by the concession to exports to all markets of the product in question.

2. Where a contracting party considers that it has a principal supplying interest in terms of paragraph 1 above, it should communicate its claim in writing, with supporting evidence, to the contracting party proposing to modify or withdraw a concession, and at the same time inform the secretariat. Paragraph 4 of the 'Procedures for Negotiations under Article XXVIII' (BISD 27S/26) shall apply in these cases.

3. In the determination of contracting parties with a principal supplying interest (whether as provided for in paragraph 1 above or in Article XXVIII:1) or substantial interest, it is agreed that only trade in the affected product which has taken place on an MFN basis shall be taken into consideration. However, trade in the affected product which has taken place under non-contractual preferences shall also be taken into account if the trade in question has ceased to benefit from such preferential treatment, thus becoming MFN trade, at the time of the renegotiation or will do so by its conclusion.

4. When a tariff concession is modified or withdrawn on a new product (i.e. a product for which three years' trade statistics are not available) the country possessing initial negotiating rights on the tariff line where the product is or was formerly classified shall be deemed to have an initial negotiating right in the concession in question. The determination of principal supplying and substantial interests and the calculation of compensation shall *inter alia* take into account production capacity and investment in the affected product in the exporting country and estimates of export growth, as well as forecasts of demand for the product in the importing country. For the purposes of this paragraph 'new product' is understood to include a tariff item created by means of a breakout from an existing tariff line.

5. Where a contracting party considers that it has a principal supplying or a substantial interest in terms of paragraph 4 above, it should communicate its claim in writing, with supporting evidence, to the contracting party proposing to modify or withdraw a concession, and at the same time inform the secretariat. Paragraph 4 of the "Procedures for Negotiations under Article XXVIII" (BISD 27S/26) shall apply in these cases.

6. When an unlimited tariff concession is replaced by a tariff rate quota, the amount of compensation provided should exceed the amount of the trade actually affected by the modification of the concession. The basis for the calculation of compensation should be the amount by which future trade prospects exceed the level of the quota. It is understood that the calculation of future trade prospects should be based on the greater of:

(i) the average annual trade in the most recent representative three year period, increased by the average annual growth rate of imports in that same period, or by ten per cent, whichever is the greater; or

(ii) trade in the most recent year increased by ten per cent.

In no case shall the liability for compensation exceed that which would be entailed by complete withdrawal of the concession.

7. Any contracting party having a principal supplying interest, whether as provided for in paragraph 1 above or in Article XXVIII:1, in a concession which is modified or withdrawn shall be accorded an initial negotiating right in the compensatory concessions, unless another form of compensation is agreed by the contracting parties concerned.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXXV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Commentary

In agreeing to forward this text to the Trade Negotiations Committee for decision, some participants indicated that they were still considering its legal and technical implications.

UNDERSTANDING ON THE INTERPRETATION OF ARTICLE XXXV OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Preamble

The CONTRACTING PARTIES

Having regard to the linked provisions of paragraph 1 of Article XXXV of the General Agreement on Tariffs and Trade;

Noting that by invoking Article XXXV a contracting party on the one hand, or a government acceding to the General Agreement on Tariffs and Trade on the other, declines to apply the General Agreement, or alternatively Article II of that Agreement, to the other party;

Desiring to ensure that tariff negotiations between contracting parties and a government acceding to the General Agreement on Tariffs and Trade are not inhibited by unwillingness to accept an obligation to apply the General Agreement as a consequence of entry into such negotiations;

Agree as follows:

A contracting party and a government acceding to the General Agreement on Tariffs and Trade may engage in negotiations relating to the establishment of a GATT schedule of concessions by the acceding government without prejudice to the right of either to invoke Article XXXV in respect of the other.

UNDERSTANDING ON PARAGRAPH 1(b) OF THE PROTOCOL OF PROVISIONAL APPLICATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND CORRESPONDING PROVISIONS IN PROTOCOLS OF ACCESSION[1]

Commentary

Agreement has to be reached on the date to be inserted in this text. This date will be that on which the 'grandfather clause' which provides cover for legislation inconsistent with Part II of the General Agreement will expire.

---

[1] Cf. paragraph 4 of the Final Act.

UNDERSTANDING ON PARAGRAPH 1(b) OF THE PROTOCOL OF PROVISIONAL APPLICATION OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND CORRESPONDING PROVISIONS IN PROTOCOLS OF ACCESSION[1]

It is agreed that the derogation provided for in paragraph 1(b) of the Protocol of Provisional Application of the General Agreement and in the corresponding provisions of the protocols of accession, according to which Part II of the General Agreement may be applied to the fullest extent not inconsistent with existing legislation, shall expire on [date].

---

[1] Cf. paragraph 4 of the Final Act.

DECISION ON THE FUNCTIONING OF THE GATT SYSTEM

Commentary

Apart from agreement on holding Sessions of the CONTRACTING PARTIES at Ministerial level every two years, the draft makes no proposals on institutional reinforcement of the GATT. Paragraph 8 provides a point at which any decisions reached by Ministers on institutional reinforcement could be incorporated into the draft.

There is not yet agreement on whether, or how, the draft statement in Section C should refer to non-trade aspects of international economic policy, and especially to exchange and interest rate problems, as well as to the terms of trade of developing countries and the definition of concessionary and non-concessionary flows of financial resources.

DECISION ON THE FUNCTIONING OF THE GATT SYSTEM

A. ENHANCED SURVEILLANCE IN THE GATT

Trade Policy Review Mechanism

1. Ministers recommend that the CONTRACTING PARTIES confirm the establishment of the Trade Policy Review Mechanism.

2. On the basis of the limited number of country reviews carried out so far, no changes at present appear necessary in the aims, coverage and procedures of the Trade Policy Review Mechanism as defined by the mid-term decision. However, bearing in mind that all contracting parties are subject to periodic review, clear guidelines are required for the efficient long-term scheduling of reviews. Such guidelines, which should be in conformity with the provisions regarding Frequency of Review of the Decision of the CONTRACTING PARTIES of 12 April 1989 establishing the Trade Policy Review Mechanism (L/6490), should be established by the Council not later than June 1991.

3. When greater experience has been gained, and not later than October 1992, the Council will review, and if necessary modify, the arrangements for the Trade Policy Review Mechanism.

Overview of Developments in the International Trading Environment

4. Ministers note that, on the basis of their mid-term decisions, and in conjunction with the country reviews under the Trade Policy Review Mechanism, the CONTRACTING PARTIES have instituted annual reviews of developments in the international trading environment which are having an impact on the multilateral trading system. Ministers regard these annual overviews by the Council as an important element in enhanced surveillance in the GATT, and recommend that they continue as under the present arrangements.

Domestic transparency

5. Ministers recognize the inherent value of domestic transparency of government decision-making on trade policy matters for both national economies and the multilateral trading system, and agree to encourage and promote greater transparency within their national systems, acknowledging that the implementation of domestic transparency must be on a voluntary basis and take account of their own legal and political systems.

Notification Procedures

6. Ministers recommend approval by the CONTRACTING PARTIES of the improvement and further review of GATT notification procedures as set out below.

THE CONTRACTING PARTIES,

DESIRING to improve the operation of notification procedures under the General Agreement, and thereby to contribute to the transparency of national trade policies and to the effectiveness of surveillance arrangements established to that end,

RECALLING their existing obligations under the General Agreement to publish and notify, including obligations assumed under the terms of specific Protocols of Accession, waivers, and other agreements entered into by the CONTRACTING PARTIES,

DESIRING to reinforce the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted by the CONTRACTING PARTIES on 28 November 1979,

Have agreed as follows:

I. General obligation to notify

Contracting parties reaffirm their commitment to existing obligations under the General Agreement regarding publication and notification.

Contracting parties recall their additional undertakings set out in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance of 28 November 1979. With regard to their undertaking therein to notify, to the maximum extent possible, their adoption of trade measures affecting the operation of the General Agreement, such notification itself being without prejudice to views on the consistency of measures with or their relevance to rights and obligations under the General Agreement, contracting parties agree to be guided by the annexed list of measures. Contracting parties therefore agree that the introduction or modification of such measures is subject to the notification requirements of the 1979 Understanding.

II. Central registry of notifications

A central registry of notifications shall be established under the responsibility of the secretariat. While contracting parties will continue to follow existing notification procedures, the Secretariat shall ensure that the registry records such elements of the information provided on the measure by the contracting party as its purpose, its trade coverage, and the requirement under which it has been notified. The registry shall cross-reference its records of notifications by country and obligation.

The central registry shall inform each contracting party annually of the regular notification obligations to which that contracting party will be expected to respond in the course of the following year.

The central registry shall draw the attention of individual contracting parties to regular notification requirements which remain unfulfilled.

Information in the central registry regarding individual notifications shall be made available on request to any contracting party entitled to receive the notification concerned.

III. Review of notification obligations and procedures

The CONTRACTING PARTIES will undertake a review of GATT notification obligations and procedures. The review will be carried out by a working group, membership in which will be open to all contracting parties. The group will be established immediately after the end of the Uruguay Round.

The terms of reference of the working group will be:

- to undertake a thorough review of all existing notification obligations of Contracting Parties established under the General Agreement, with a view to simplifying, standardizing and consolidating these obligations to the greatest extent practicable, as well as to improving compliance with these obligations, bearing in mind the overall objective of improving the transparency of national trade policies and the effectiveness of surveillance arrangements established to this end, and also bearing in mind the possible need of some developing Contracting parties for assistance in meeting their notification obligations;
- to make recommendations to the Council by 31 December 1991.

B. INSTITUTIONAL REINFORCEMENT OF THE GATT

7. Ministers recall the Decision of the CONTRACTING PARTIES of 12 April 1989 (L/6490) that the CONTRACTING PARTIES should meet at Ministerial level at least every two years, in order, inter alia:

(a) to make a fuller contribution to the direction and content of GATT work;

(b) to reinforce the commitment of governments to the GATT system;

(c) to give greater prominence to GATT in domestic political arenas;

(d) to assess trends in international trade and place these trends in their wider economic and political context;

(e) to enable the CONTRACTING PARTIES to contribute effectively to international discussion at the policy level of the international adjustment process; and by these means

(f) to increase the contribution of the GATT to greater coherence in global economic policy making.

[8. The results of the Uruguay Round on which Ministers have now reached agreement substantially enlarge the scope of future co-operation among their governments on trade matters. This will require appropriate adaptation of existing consultative and institutional arrangements. [Accordingly, [[1]].]]

C. INCREASING THE CONTRIBUTION OF THE GATT TO ACHIEVING GREATER COHERENCE IN GLOBAL ECONOMIC POLICYMAKING

9. The globalization of the world economy has led to ever-growing interactions between the economic policies pursued by individual countries, including interactions between the structural, macroeconomic, trade, financial and development aspects of economic policymaking. The task of achieving harmony between these policies falls primarily on governments at the national level, but their coherence internationally is an important and valuable element in increasing the effectiveness of these policies at national level. The agreements reached in the Uruguay Round show that all the participating governments recognize the contribution that liberal trading policies can make to the healthy growth and development of their own economies and of the world economy as a whole.

10. At the international level, the Uruguay Round has taken place over a period marked by large and persistent external imbalances among major industrial countries, protectionist pressures, [exchange rate [instability] [adaptation] and high real interest rates,] [a deterioration in the terms of trade of developing countries,] and continuing severe debt problems in a number of countries, particularly developing countries, accompanied by inflationary, fiscal and balance-of-payments difficulties. Since each of these factors interacts with the others, successful co-operation in each area of economic policy contributes to progress in other areas. [A stable and efficient international monetary system contributes] [Greater exchange rate stability and more orderly underlying economic and financial conditions should contribute] to the expansion of trade, sustainable growth and development, and the correction of external imbalances. The central rôle of the IMF in overseeing and improving the international monetary system is recognized. Ministers also recognize the need for an adequate and timely flow of concessional and non-concessional financial resources [in real terms], and for further efforts to address debt problems, to ensure economic growth and development. Trade liberalization forms an increasingly important component in the success of the adjustment programmes that many countries are undertaking, often involving significant transitional social costs. In this connection, Ministers note the rôle of the World Bank and the IMF in supporting adjustment to trade liberalization, including support to net food-importing developing countries facing short-term costs arising from agricultural trade reforms.

---

[1] Any decisions on consultative or institutional arrangements to improve the overall effectiveness and decision-making of the GATT as an institution could be included here, including that of the analytical capacity of the secretariat.

11. The positive outcome of the Uruguay Round [, in particular, commitments by participants to the substantial reduction of trade-distorting subsidies to agriculture,] [and similarly the full integration of trade in textiles and clothing into GATT,] is a major contribution towards more coherent and complementary international economic policies. The results of the Uruguay Round ensure an expansion of market access to the benefit of all countries, as well as a framework of strengthened multilateral disciplines for trade. They also guarantee that trade policy will be conducted in a more transparent manner and with greater awareness of the benefits for domestic competitiveness of an open trading environment. The strengthened multilateral trading system emerging from the Round has the capacity to provide an improved forum for liberalization, to contribute to more effective surveillance, and to ensure strict observance of multilaterally agreed rules and disciplines. These improvements mean that trade policy can in future play a more substantial rôle in ensuring the coherence of global economic policymaking.

[12. Ministers recognize, however, that difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone. This underscores the importance of efforts to improve other elements of global economic policymaking to [permit] [complement] the effective implementation of the results achieved in the Uruguay Round.]

13. The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. GATT should therefore pursue and develop its co-operation with the international organizations responsible for monetary and financial matters, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions. Ministers further recommend that the CONTRACTING PARTIES invite the Director-General of GATT to review, with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of GATT's future responsibilities for its co-operation with the Bretton Woods institutions, as well as the forms such co-operation might take, with a view to achieving greater coherence in global economic policymaking. The Director-General should report his conclusions to the Council by 31 December 1991. In this review, he should take into account the specific proposals to develop closer institutional co-operation put forward in the course of the Uruguay Round negotiations.

ANNEX

Indicative list[1] of notifiable measures

- tariffs (including range and scope of bindings, GSP provisions, rates applied to members of free trade areas/customs unions, other preferences)
- tariff quotas and surcharges
- QRs, including VERs and OMAs affecting imports
- other non-tariff measures such as licensing and mixing requirements; variable levies
- customs valuation
- rules of origin
- government procurement
- technical barriers
- safeguard actions
- anti-dumping actions
- countervailing actions
- export taxes
- export subsidies, tax exemptions and concessionary export financing
- free trade zones, including in-bond manufacturing
- export restrictions, including VERs and OMAs
- other government assistance, including subsidies, tax exemptions
- rôle of state-trading enterprises
- foreign exchange controls related to imports and exports
- government-mandated countertrade
- any other measure covered by the General Agreement, its annexes and its protocols.

---

[1] This list does not alter existing notification requirements in specific GATT Articles and in agreements and arrangements negotiated under GATT auspices.

ACTION ON ROLLBACK

---

[1] Cf. paragraph 16 of Report of the Chairman of the Surveillance Body (MTN.SB/14).

ANNEX II

GENERAL AGREEMENT ON TRADE IN SERVICES

Commentary

1. The draft text of the Agreement is submitted by the Chairman of the Group of Negotiation on Services on his own responsibility. There remain many divergences of views among participants, and most of these are reflected in square brackets in the text.

2. The major decision which has to be taken concerning this text relates to whether most-favoured-nation treatment (Article II) is to be treated as a general obligation to extend the benefits of any measure on trade in services from any country to all parties, or whether it would involve only the application to other Parties of benefits given under the provisions of the Agreement to one Party.

3. The alternative text for Article II also raises the question whether it would be necessary to provide in sectoral Annexes for any specific derogations from m.f.n., or to include in them any provisions protecting bilateral and other agreements. The present Annexes are drawn up on the assumption that the first alternative m.f.n. provision applies. If this assumption is maintained, decisions will have to be taken on the scope of the derogations from m.f.n. which are reflected in the present draft Annexes.

4. While there was agreement on the need for a sectoral Annex on financial services, there was no agreement on its scope and content. The content of such an Annex would again depend on the manner in which the m.f.n. issue is settled.

5. The inclusion and contents of an Annex on labour mobility are important for many developing countries and some other participants, as the Annex would have a bearing on the nature of commitments which might be negotiated with respect to the supply of labour services.

6. The conditions for application of the balance-of-payments provisions of the Agreement (Article XII) are regarded by many countries as crucial.

7. The scope of exceptions provided for in Article XIV also needs to be clarified.

8. There is a number of other questions, including technical matters, on which detailed work remains to be completed. The legal consistency and some formal aspects of the draft will also require further examination before the Agreement can be formally adopted.

9. The text has attached to it for consideration a draft decision on initial commitments.

GENERAL AGREEMENT ON TRADE IN SERVICES

PREAMBLE

Part I SCOPE AND DEFINITION

Article I Scope and Definition

Part II GENERAL OBLIGATIONS AND DISCIPLINES

Article II Most-Favoured-Nation Treatment
Article III Transparency
Article IV Increasing Participation of Developing Countries
Article V Economic Integration
Article VI Domestic Regulation
Article VII Harmonization and Recognition
Article VIII Monopolies and Exclusive Service Providers
Article IX Behaviour of Private Operators
Article X Emergency Safeguard Measures
Article XI Payments and Transfers
Article XII Restrictions to Safeguard the Balance of Payments
Article XIII [Public] [Government] Procurement
Article XIV Exceptions
Article XV Subsidies

Part III SPECIFIC COMMITMENTS

Article XVI Market Access

Article XVII National Treatment

Part IV PROGRESSIVE LIBERALIZATION

Article XVIII Negotiation of Commitments

Article XIX Application

Article XX Schedules of Commitments

Article XXI Modification of Schedules

Part V INSTITUTIONAL PROVISIONS

Article XXII Consultation

Article XXIII Dispute Settlement and Enforcement

Article XXIV Joint Action

Article XXV Council

Article XXVI Technical Cooperation

Article XXVII Relationship with Other International Organizations

Part VI FINAL PROVISIONS

Article XXVIII Acceptance and Accession

Article XXIX Entry into Force

Article XXX Non-Application

Article XXXI Denial of Benefits

Article XXXII Amendments

Article XXXIII Withdrawal

Article XXXIV Definition of Terms

Article XXXV Annexes

PREAMBLE

The Parties to this Agreement,

Recognizing the growing importance of trade in services for the growth and development of the world economy;

[Recognizing the sovereignty of national economic space;]

Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

[Recognizing the right of Parties to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives, and the particular need of developing countries to exercise this right;]*

Desiring to facilitate the increasing participation of developing countries in international trade in services and the expansion of their service exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

Taking particular account of the serious difficulty of the least developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby agree as follows:

---

*Alternative to paragraph 1 of Article VI.

PART I

SCOPE AND DEFINITION

Article I

Scope and Definition

1. This Agreement applies to measures by Parties affecting trade in services.

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

(a) from the territory of one Party into the territory of any other Party;

(b) in the territory of one Party to the service consumer of any other Party;

(c) by natural persons of one Party in the territory of any other Party; and

(d) through the [commercial] presence of [service providing entities] [juridical persons] of one Party in the territory of any other Party [, the provision of service being for a limited duration and a specified purpose].

3. For the purposes of this Agreement:

(a) "measures by Parties" means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of governmental powers [or in the grant of governmental benefits];

[(iii) Each Party is fully responsible under the Agreement for the observance of all provisions of the Agreement and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory.]*

(b) "services" includes any service in any sector [except services supplied in the exercise of governmental functions].

---

*Several participants proposed the inclusion of this paragraph with the precise location of it to be determined later.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment

1. With respect to any measure covered by this Agreement, each Party shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than that it accords to like services and providers of like services of any other country [in like circumstance] [with respect to the same mode of delivery].

2. [The provisions of paragraph 1 of this Article shall temporarily not apply to those activities in specific sectors covered by other international agreements as are identified and set out in the annexes to this Agreement.]

3. The application of paragraph 2 shall be subject to review pursuant to paragraph 1 of Article XIX.

4. Without prejudice to specific commitments in its schedule, the presence in its territory of service providers of another country on terms which have since been altered by the host Party, shall not subsequently require the host Party to permit the presence of service providers of other Parties in its territory on the same terms.**

Alternative text of Article II

[In applying the provisions of this Agreement, including the commitments in its schedule, a Party shall accord to the services and service providers of another Party treatment no less favourable than the treatment it accords to like services and like service providers of any other Party.]

---

*The provisions of this Article do not apply to international agreements on taxation, investment protection or juridical and/or administrative assistance.

**The placement and the formulation of this paragraph are yet to be agreed.

Article III

Transparency

1. Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant laws, regulations, administrative guidelines and all other decisions, rulings, or measures of general application, whether made effective by national or sub-national government bodies or by a non-governmental regulatory entity, which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party to this Agreement is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Party shall promptly inform the PARTIES at least annually of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Party shall respond promptly to all requests for specific information, by other Parties, on any of its laws, regulations, administrative guidelines or any other decisions, rulings, measures of general application or international agreements within the meaning of paragraph 1. Each Party shall also establish one or more enquiry points to provide specific information to other Parties, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within (...) years from the entry into force of the Agreement. Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing countries. Enquiry points need not be depositories of laws and regulations.

5. Any Party may notify to the PARTIES any measure, taken by another Party, which it considers affects the operation of this Agreement.

6. The provisions of this Article shall not require any Party to provide confidential information the disclosure of which would impede law enforcement or otherwise contrary to the public interest or prejudice legitimate commercial interests.

Article IV

Increasing Participation of Developing Countries

1. The increasing participation of developing countries in world trade shall be facilitated through specific commitments by different Parties pursuant to Parts III and IV of this Agreement relating to, inter alia:

- the strengthening of [their technological capabilities and] their domestic services capacity and its efficiency and competitiveness;
- the improvement of their access to [technology and to] distribution channels and information networks; and
- the liberalization of market access in sectors and modes of delivery of export interest to them.

2. Developed Parties, and to the extent possible other Parties, shall establish contact points within (...) years from the entry into force of this Agreement to facilitate the access of developing countries' service providers to information, related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;

(b) registration, recognition and obtaining of professional qualifications; and

(c) the availability of services technology.

3. Special priority shall be given to the least developed countries in the implementation of paragraphs 1 and 2 above. In view of the weakness of their domestic service capacity, [special consideration shall be given to their difficulties in accepting commitments under Parts III and IV of this Agreement.] [they will not be expected to make commitments until their domestic service sector becomes significantly competitive.]

Article V

Economic Integration

[1. The provisions of this Agreement shall not prevent any of its Parties from being a party to or entering an agreement establishing among the parties thereto a higher degree of liberalization of trade in services than that set out in their schedules, on condition that such an agreement:

(a) provides for a high degree of liberalization within a reasonable period of time;

(b) has substantial sectoral coverage, and

(c) involves the different modes of delivery.

In evaluating whether the above conditions are met, positive consideration shall be given to the relationship of the agreement to a wider process of economic integration among the countries concerned.

2. Where developing countries are parties to an agreement, flexibility shall be provided for regarding the conditions set out in paragraph 1 of this article, in accordance with the level of development of the countries concerned.

3. Agreements referred to in paragraphs 1 and 2 of this Article shall not in respect to other Parties raise overall levels of barriers to trade in services within the respective sectors/sub-sectors. Parties to an agreement should seek to implement any common measures with respect to other Parties at the least restrictive level existing prior to entering into such an agreement.

4. Any Party deciding to enter into or modify significantly an agreement referred to in paragraphs 1 and 2 of this Article shall promptly notify the PARTIES and make available to them such information as they deem appropriate. The PARTIES shall establish a working party to examine such agreement or modifications in the light of the provisions of this Article. The progress in the implementation of such agreements, including existing agreements, shall be reviewed periodically.

5. If a Party outside an agreement referred to in paragraph 1 or 2 of this Article considers that the benefits accruing to it from a specific commitment under Parts III and IV of this Agreement are adversely affected as a result of such an agreement the procedures set forth in Article XXI shall apply.

6. This Agreement imposes no obligation on Parties benefiting from the liberalization resulting from an agreement referred to in paragraphs 1 or 2 of this Article to provide compensation to its members.

7. The provisions of this Agreement shall not be construed to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges in contiguous frontier zones of locally produced and locally consumed services.]

Alternative text of Article V

[1. The provisions of this Agreement shall not prevent any of its Parties from being a party to or entering an agreement establishing among the parties thereto a higher degree of liberalization of trade in services than that set out in their schedules, on condition that such an agreement:

(a) covers substantially all services sectors,

(b) provides for a higher degree of liberalization in all covered sectors within a reasonable period of time,

(c) covers substantially all trade in services, and

[(d) applies to services trade supplied both cross-border and within the territory of each party.]
[(d) applies to each relevant mode of delivery in each service sector.]

2. Where developing countries are parties to an agreement, the provisions of paragraph 1 shall be interpreted with flexibility, in accordance with the level of development of the countries concerned.

3. Notwithstanding paragraph 1, Article II shall apply to service providers of other Parties to this Agreement that are commercially present in the territory covered by the Agreement.

4. Any agreement of the type referred to in paragraphs 1 shall not raise barriers to trade in services in respect of other Parties to this Agreement nor deny existing benefits enjoyed by other Parties. Any recognition or harmonization of measures, standards or qualifications relating to the supply of a service among the parties shall be conducted in accordance with Article VII and shall not raise the overall level of barriers to trade in respect of the services activities concerned.

5. Any agreement under paragraph 1 and any significant modification of such an agreement shall be promptly notified to the PARTIES. The parties to the agreement shall make available to the PARTIES such information as they deem appropriate. The PARTIES shall establish a working party to examine such agreement or modification in the light of the provisions of this Article. The progress in the implementation of such agreements, including existing agreements, shall be reviewed periodically.

6. If a Party outside an agreement referred to in paragraph 1 or 2 of this Article considers that the benefits accruing to it from a specific commitment under Parts III and IV of this Agreement are nullified or impaired as a result of such an agreement, the Party may have recourse to Articles XXII or XXIII.

7. This Agreement imposes no obligation on Parties outside an agreement referred to in paragraph 1 benefiting from the liberalization resulting from the agreement to provide compensation to its members.

8. The provisions of this Agreement shall not be construed to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges in contiguous frontier zones of locally produced and locally consumed services.]

Article VI

Domestic Regulation

[1. Subject to the provisions of this Agreement, the right of Parties to regulate the provision of services within their territories in order to meet national policy objectives is recognized. This includes the right to introduce new regulations. It is recognized that, given the asymmetries existing with respect to the degree of development of services regulations in different countries, developing countries may have a particular need to exercise this right. Such right may include, inter alia, the granting of exclusive rights in certain sectors in order to implement national policy objectives.]*

2. Subject to the provisions of this Agreement, Parties may require that services or services providers of other Parties meet certain regulations, standards or qualifications. Such requirements shall not be applied in a manner which constitute a means of discrimination between Parties or a restriction on international trade in services. Parties shall administer these measures in a reasonable, objective and an impartial manner. Such requirements shall be based upon objective criteria, such as competence and the ability to provide such services, and not be more burdensome than necessary to achieve national policy objectives.**

---

*See paragraph 5 of the Preamble.

**Interpretative note on paragraph 2. Requirements which are not based upon objective criteria shall be considered as restrictions on market access and/or limitations on national treatment and, when a specific commitment is made, shall be inscribed, as appropriate, in the Party's schedule.

[2. Where Parties require that services or service providers of other Parties must meet certain standards or qualifications, such requirements shall be based upon objective criteria, such as competence and the ability to provide such services, and not be more burdensome than necessary to achieve national policy objectives. Parties shall administer such measures in a reasonable, objective and impartial manner.*]

3. (a) Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service provider or consumer, for the prompt, review of and, where justified, appropriate remedies for administrative decisions relating to the supply of services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that they do in fact provide for an objective and impartial review.

(b) The provisions of sub-paragraph (a) shall not require a Party to institute such tribunals or procedures where this [would be inconsistent with] [is not provided for under] its constitutional structure or legal system.**

4. Where authorization is required for the provision of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.

[5. Where measures of a Party impose obligations on service providers in the territory of another Party, and lead to conflicting requirements or adverse effects, affected Parties shall promote co-operation and, as appropriate, respond promptly and positively to requests for consultations on such matters.]

[*Interpretative note on paragraph 2. The provisions of paragraph 2 apply only the extent that a Party has taken a market access or national treatment commitment. Any derogation from paragraph 2 shall be inscribed in the the Party's schedule.]

**[In the absence of a review procedure the matter may be taken up under Article XXIII (Dispute Settlement).]

[6. Parties shall not, by immigration measures related to the temporary movement of natural persons, frustrate the intent of this Agreement, nor nullify or impair benefits arising from specific commitments set out in their national schedules. Where specific commitments involving the movement of natural persons have been made, each Party shall issue work permits and other permissions needed for the work and stay on a temporary basis in its territory of persons covered by such commitments.]

Article VII

Harmonization and Recognition

1. Subject to the conditions set out in paragraph 2, Parties may adopt arrangements or agreements with other [countries] [Parties] which:

   (a) provide for the facilitation of the supply of services to the markets of such [countries] [Parties], though not themselves constituting specific commitments, in the sense of Part III, and

   (b) provide for recognition or harmonization of regulations, standards or qualifications relating to the supply of a service.

2. Such arrangements or agreements:

   (a) shall, on the basis of negotiations, be open for participation by other parties. Alternatively, on the basis of negotiations, like arrangements or agreements may be adopted with other parties;

   (b) shall not be formulated and applied in a manner inconsistent with the provisions of Article VI.2.

   (c) where it relates to professional services, shall concern qualifications, standards or scope of practice based on objective criteria such as competence.

3. Parties shall administer such arrangements and agreements in a reasonable, objective and impartial manner.

4. Notification of the PARTIES:

   (a) Parties shall within 12 months of entry into force of the Agreement inform the PARTIES of their harmonization and recognition arrangements or agreements which qualify under this Article.

   (b) In order to allow other interested Parties a sufficient opportunity to participate in such arrangements or agreements Parties shall on a timely basis inform the PARTIES when they decide to enter into negotiations with a view to the conclusion of such arrangements or agreements.

(c) Parties shall promptly inform the PARTIES of any new arrangements or agreements concluded pursuant to this Article, and of any significant changes to existing or new ones.

5. In the absence of such arrangements or agreements between Parties, such Parties shall provide domestic procedures, where appropriate, for determining the competence of professionals from other Parties in sectors where commitments under Articles XVI and XVII have been made.

6. [Co-operative arrangements]*

[Note: There is a question of whether, as part of the possible future work programme, the promotion of the use of international standards might be taken up for appropriate services sub-sectors, e.g. professionals.]

Alternative text of Article VII

[1. Parties may enter into agreements with other countries or adopt arrangements which provide for the recognition or harmonization among each other of standards and qualifications relating to the supply of services. Parties to these agreements or arrangements shall afford adequate opportunity to any other Party to negotiate their participation to an existing agreement or arrangement or the adoption of comparable agreements or arrangements.

2. Such agreements or arrangements shall not be formulated or applied in a manner which would constitute a means of [arbitrary or unjustifiable] discrimination between Parties or introduce new barriers to trade services for other Parties.

3. Parties shall:

(a) within 12 months of entry into force of the Agreement inform the PARTIES of any existing arrangements or agreements referred to in paragraph 1;

(b) promptly inform the PARTIES of any new agreements and arrangements under paragraph 1 and of significant changes therein;

(c) promptly inform the PARTIES of the opening of negotiations of agreements or arrangements under paragraph 1 in order to allow any Party to exercise their rights under paragraph 1.

---

*Some participants suggested adding a new paragraph concerning co-operative arrangements.

4. In agreements or arrangements under paragraph 1, wherever appropriate, recourse should be made to internationally agreed requirements. Parties shall, in co-operation with the relevant international organizations work towards the establishment and adoption, where appropriate, of international standards.

5. Parties that have made specific commitments under Articles XVI and XVII in their schedules shall, in the absence of agreements or arrangements under paragraph 1, provide for adequate procedures in order to verify the competence of professionals of other parties.

6. Co-operative arrangements (p.m.)]

Article VIII

Monopolies and Exclusive Service Providers

1. Each Party shall ensure that any monopoly provider of a service in its territory does not, in providing the monopoly service in the relevant market, behave in a manner which would nullify or impair benefits to which service providers of other Parties are entitled under Articles II, XVI and XVII of this Agreement.

2. Where a monopoly provider of a service competes either directly or through an affiliated company in the provision of another service subject to a commitment under Articles XVI or XVII which is outside the scope of its monopoly rights, the Party concerned shall ensure that such a provider does not exploit its monopoly position to operate otherwise than in accordance with [normal commercial considerations] [competition legislation of the territory concerned].

3. The PARTIES may, at the request of a Party which has a reason to believe that benefits accruing to it under Articles II, XVI and XVII of this Agreement are being adversely affected by operations of a monopoly provider of a service, request the Party establishing, maintaining or authorizing such entity to provide specific information concerning such operations. This shall not require any Party to provide confidential information the disclosure of which would impede law enforcement or prejudice legitimate commercial interests of particular service providers.

4. If, after the entry into force of this Agreement, a Party grants monopoly rights regarding the provision of a service covered by its specific commitments under this Agreement, Article XXI applies.

5. For the purposes of this Article, a "monopoly provider of a service" is any entity, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole provider of that service.

[6. The provisions of this Article shall also apply to cases where a Party designates formally or in effect a limited number of service providers and substantially limits, or permits substantial limitations on, competition among those providers.]

[7. Nothing in this Agreement condemns or condones the creation or maintenance of monopoly service providers.]

Article IX

Behaviour of Private Operators

1. [In order to prevent business practices of private operators which adversely affect competition in their services markets, including through anti-competitive restrictions on the exports of services, Parties shall, at the request of another Party, undertake consultations [between authorities responsible for competition policy] with a view to eliminating such practices [in accordance with their respective legislations].]

[1. In order to prevent business practices of private operators which adversely affect competition in their services markets or inhibit their exports of services, Parties shall, on request, provide information bearing on such practices and shall co-operate to eliminate such practices through consultation.]

2. The provision of information and its use by other Parties, under this Article, shall be subject to the provisions on confidentiality of Parties' respective laws and shall be dealt with in such a way as to safeguard the legitimate commercial interests of particular service providers.

[Article X

Emergency Safeguard Measures*

1. If, as a result of unforeseen developments and of the effect of a specific commitment assumed by a Party under this Agreement, any service is being imported into the territory of that Party [or is being supplied by a foreign service provider] in such increased quantities and under such conditions as to cause or threaten serious injury to domestic providers of a like service, the Party shall be free to suspend, in whole or in part, such a commitment to the extent and for the time necessary to remedy the injury.

---

*There is a question of whether Article X is needed, or whether work needs to be undertaken to develop appropriate provisions relating to emergency safeguard measures.

2. Any Party introducing a measure in pursuance of paragraph 1 shall, prior to its introduction or immediately thereafter, notify the PARTIES of such measure as well as all relevant data concerning the existence of serious injury or threat thereof, and shall provide adequate opportunity for consultations with Parties affected by the measure.

[3. Where such consultations do not lead to agreement, the Parties affected may suspend substantially equivalent concessions the suspension of which is not disapproved by the PARTIES.]

4. All measures falling under this Article shall be subject to surveillance by the PARTIES.]

Alternative text of Article X

[1. Within two years from the entry into force of the Agreement, multilateral negotiations shall be completed on the question of emergency safeguard measures.

2. Meanwhile, the three year delay in the ability of Parties to invoke Article XXI and the three months period required for notification under paragraph 1 of that Article are hereby suspended. This provision shall end within the two years referred to in paragraph 1.]

Article XI

Payments and Transfers

1. Except under the circumstances envisaged in Article XII, specific commitments on trade in services under this Agreement shall not be frustrated by restrictions on payments or transfers for [current] transactions related to such commitments.

2. Nothing in this Agreement shall affect the rights and obligations of members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with these Articles of Agreement.

Article XII

Restrictions to Safeguard the Balance of Payments*

1. [In order to safeguard against a deterioration in its external financial position and its balance of payments] [In the event of imminent or actual serious external financial or balance-of-payments difficulties], a Party may adopt or maintain [temporary] restrictions on [trade in] [cross-border provision of] services on which it has undertaken specific commitments, or on payment[s] or transfer[s] [outflows] for transactions related to such commitments. It is recognized that [particular pressures on the balance of payments of] a Party in the process of economic development [is more vulnerable to such difficulties, which] may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of [external] financial reserves adequate for the implementation of its programme of economic development.

2. Any restrictions adopted or maintained under paragraph 1 of this Article, or any changes therein, shall be promptly notified to the PARTIES.

3. Such restrictions shall not exceed those necessary, bearing in mind any recommendations made pursuant to paragraph 6 below, to deal with the circumstances described in paragraph 1.

4. The restrictions referred to in paragraph 1 above:

(i) shall not discriminate among Parties to the Agreement;

(ii) shall avoid unnecessary damage to the commercial and economic interests of other Parties; and

[(iii) shall be temporary and uniformly applied to all services;]

[(iv)] shall be relaxed progressively as conditions improve and maintained only to the extent that the circumstances described in paragraph 1 above justify their application.

[5. In determining the incidence of such restrictions, Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be taken for the purpose of protecting a particular service sector.]

6. Parties applying the provisions of this Article shall consult promptly with the PARTIES on restrictions maintained under this Article. The PARTIES shall develop procedures for consultations with the objective of

---

*Some participants are of the view that provisions to safeguard the balance of payments in the Agreement should be drafted along the lines of Articles XII and XVIII:B of the GATT.

enabling such recommendations to be made to the Party concerned as they may deem appropriate. Such consultations shall also take into consideration, inter alia, such factors as the nature and extent of the [external financial and] balance-of-payments difficulties, [the external economic and trading environment of the consulting Party], and alternative corrective measures which may be available. In such consultations, the PARTIES shall accept all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, and [take into account] the assessment by the Fund of the [external financial and] balance-of-payments situation of the Party.

[7. After completion of such consultations, any Party that considers the Party applying the measure has failed to comply with the provisions of the Article may have recourse to Articles XXII and XXIII.]

8. If a Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the PARTIES will establish review and any other procedures necessary.

Article XIII

[Public] [Government] Procurement

The provisions of Articles II, XVI and XVII shall not apply to procurement covered by [public] [government] procurement laws and regulations.*

[[Public] [Government] procurement would be included in the list of subjects on which there shall be multilateral negotiations within two years from the entry into force of the Agreement.]

Article XIV

Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on international trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures necessary:

---

*Parties may negotiate [offer] additional commitments pursuant to paragraph 4(e) of Article XVIII in the area of [public] [government] procurement.

(a) to protect [national security] public morals [and order], safety, [sustainable development and environment,] [human, animal and plant life and], health [cultural values,] [its environment,] [data,] [the integrity of infrastructure or transportation systems,] [conservation of exhaustible natural resources];

(b) to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to [the imposition of direct taxes or] the prevention of deceptive and fraudulent practices [, as well as the protection of confidentiality of individual records and accounts].

2. The PARTIES shall be informed of measures taken under paragraph 1.

3. Nothing in this Agreement shall be construed:

(a) to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the provision of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable materials or the materials from which they are derived;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

4. The PARTIES shall be informed to the fullest extent possible of measures taken under paragraph 3(b) and (c).

Article XV

Subsidies

1. Parties recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Parties shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade distortive effects.* The negotiations shall also address the appropriateness of countervailing procedures. Such [disciplines] [negotiations] shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Parties, particularly developing countries, for flexibility in this area. For the purpose of such negotiations, Parties shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service providers.

2. Any Party which considers that it is adversely affected by a subsidy of another Party may request consultations with that Party on such matters. Such requests shall be accorded sympathetic consideration.

PART III

SPECIFIC COMMITMENTS

Article XVI

Market Access

1. With respect to market access through the modes of supply identified in Article I of this Agreement, each Party shall grant services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule.

2. Where access through more than one mode of supply is provided for in a Party's schedule, service providers of other Parties shall be free to choose their preferred mode of delivery.

---

*Future work programme shall determine how and in what time-frame negotiations on the multilateral discipline and the appropriateness of countervailing procedures will be conducted.

Article XVII

National Treatment

1. In conformity with other relevant provisions of this Agreement, and in accordance with the conditions and qualifications set out in its schedule, each Party shall accord to services and service providers of other Parties, in respect of all measures affecting the supply of services, treatment no less favourable than that accorded to like domestic services or providers of like services.

[2. The treatment a Party accords to services and service providers of other Parties shall be considered to be no less favourable within the meaning of paragraph 1 if it accords to the services or service providers of other Parties opportunities to [compete] [supply services] that are no less favourable than those accorded to like domestic services or providers of like services.]

PART IV

PROGRESSIVE LIBERALIZATION

Article XVIII

Negotiation of Commitments

1. In pursuance of the objectives of this Agreement, Parties shall enter into successive rounds of negotiations, beginning not later than ... from the date of entry into force of this Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations. [A least developed Party shall benefit from the extension of all concessions exchanged under this Agreement.]

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Parties. There shall be appropriate flexibility for individual developing countries for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service providers, attaching to it conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. In drawing up such guidelines account shall be taken of:

(a) the results of an evaluation of previous negotiations with regard to the objectives of this Agreement, on the basis of objective criteria to be agreed by the PARTIES [, including the evolution of developing countries' share in world trade in services and their competitive position in such trade and the average level of liberalization achieved internationally in the different services sectors].

(b) the need to fulfil the provisions of Article IV;

(c) the liberalization autonomously undertaken by each Party, particularly developing countries, since the last negotiating round;

(d) the serious difficulties of the least-developed countries in accepting commitments in view of their special economic situation, development, trade and financial needs.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of bindings assumed by Parties with respect to the specific commitments under Part III of this Agreement. Such negotiations shall take place among Parties on the following:

(a) new market access commitments with respect to unbound sectors, sub-sectors or modes of delivery through binding levels of market access;

(b) new national treatment commitments with respect to unbound sectors, sub-sectors or modes of delivery;

(c) total or partial elimination of any limitations and/or conditions on market access in bound sectors, sub-sectors or modes of delivery;

(d) total or partial elimination of any conditions and/or qualifications on national treatment in bound sectors, sub-sectors or modes of delivery;

[(e) upon request, additional commitments to provide market access through the modification or elimination of measures which restrict the range of activities or otherwise deny service providers of other Parties competitive opportunities on the market of the Party concerned equal to those of its own providers.]

[5. Parties may negotiate further commitments on trade liberalization in covered services.]

Article XIX

Application

1. Except as otherwise indicated, the provisions of this Agreement, other than those in Part III, shall be applied to all sectors by all Parties in accordance with any relevant sectoral annexes from the date of entry into force of the Agreement. In cases where there are derogations from the general obligations in Part II, in accordance with any sectoral annexes, they shall be subject to periodic review by the PARTIES having regard to the objectives and the provisions of this Agreement.

2. Provisions in Part III shall be applied by each Party to the sectors, sub-sectors and modes of delivery covered in its schedule, in accordance with the negotiated specific commitments set out therein.

[3. After negotiations on specific commitments are concluded and the resulting commitments inscribed in schedules, a Party shall not, with respect to sectors, sub-sectors and modes of delivery covered therein:

(a) place or maintain limitations or conditions on market access, other than as set out in its schedule of bindings;

(b) modify existing, or introduce new measures, which would result, with respect to national treatment, in according services or service providers of other Parties treatment less favourable than that provided for in its schedule of bindings.]

[3. After negotiations on specific commitments are concluded and the resulting commitments are inscribed in schedules, a Party shall not:

(a) with respect to all sectors, unless otherwise provided in its schedules as a result of negotiations, modify existing, or introduce new measures, which would result, with respect to national treatment or market access, in according services or service providers of other Parties treatment less favourable than that provided for under existing measures;

(b) with respect to sectors, sub-sectors and modes of delivery covered by its specific commitments:

(i) place or maintain limitations or conditions on market access, other than as set out in its schedule of bindings;

(ii) modify existing, or introduce new measures, which would result, with respect to national treatment or market access, in according services or service providers of other Parties treatment less favourable than that provided for in its schedule of bindings.]

Article XX

Schedules of Commitments

1. Each Party shall set out in its schedule the commitments resulting from its negotiations with other Parties. Each schedule shall specify sectors and sub-sectors where bindings exist and shall in addition contain the following elements:

(a) any limitations and conditions on market access*;

(b) any conditions and qualifications on national treatment*;

(c) with a view to identifying clearly the scope of the commitment, where a partial binding of a sector or a sub-sector exists, an indication as to where market access or national treatment are not bound with respect to any of the modes of delivery;

(d) where appropriate, the agreed time-frame for the implementation of commitments;

[(e) any additional measures to achieve market access;]

(f) date of entry into force of commitments.

2. Schedules of bindings shall be annexed to this Agreement and form an integral part thereof.

Article XXI

Modification of Schedules

1. Any Party may, after a period of three years from the date a commitment enters into force, notify the PARTIES of its intention to modify or withdraw such a commitment included in its schedule. Such a Party (hereafter in this Article referred to as the "applicant Party") shall make such notification to the PARTIES no later than three months before the intended implementation of the modification or withdrawal.

---

*Where there is a total binding of market access or national treatment, in a given sector or sub-sector with respect to one of the modes of delivery, the word "None" would be entered to indicate that there are no such limitations, conditions or qualification.

2. At the request of any affected Party (which together with the applicant Party are in this Article hereinafter referred to as the "Parties concerned") the applicant Party shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. Such request shall be notified to the PARTIES.

3. In the event an agreement cannot be reached within the period of three months referred to in paragraph 1, the applicant Party shall be free to implement the proposed modification. Affected Parties, as determined by the PARTIES, shall, no later than six months after such implementation, be free to make adequate compensatory adjustments in the form of withdrawing or modifying equivalent commitments in their schedules. Any such modification or withdrawal shall be notified to the PARTIES. If any third Party should consider that such modification or withdrawal has adversely affected any benefit accruing to it under this Agreement it may refer the matter to the PARTIES with a view to their making appropriate recommendations.

4. Notwithstanding the provisions of paragraph 3, it shall be open to any Party concerned, prior to the expiry of the three months period referred to above, to refer the matter to the PARTIES for consideration and recommendation.

PART V

INSTITUTIONAL PROVISIONS

Article XXII

Consultation

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by another Party with respect to any matter affecting the operation of this Agreement.

2. The PARTIES may, at the request of a Party, consult with any Party or Parties in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

Article XXIII

Dispute Settlement and Enforcement

1. If any Party should consider that another Party fails to carry out its obligations or commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the PARTIES. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.

2. If no satisfactory solution is effected between the Parties concerned within a reasonable period of time, the matter may be referred to the PARTIES. The PARTIES shall promptly investigate any such matter referred to them and shall make appropriate recommendations to the Parties which they consider to be concerned, or give rulings on the matter, as appropriate. The PARTIES may consult with other Parties as well as any relevant inter-governmental organization in cases where they consider such consultations necessary.

3. If the PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a Party or Parties to suspend the application to any other Party or Parties of such obligations and commitments under this Agreement as they determine to be appropriate in the circumstances.

[4. If any Party considers that any benefit it could reasonably have expected to accrue to it under a commitment assumed by another Party in its Schedule of Commitments is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may resort to the procedures of Article XXII and Article XXIII, paragraphs 1 and 2. If the commitment is determined by the PARTIES to have been nullified or impaired and the measure is not withdrawn, the commitment shall be deemed to have been modified or withdrawn and paragraphs 2 and 3 of Article XXI [on modification of schedule commitments] shall apply.]*

Article XXIV

Joint Action

1. Representatives of the Parties shall meet as necessary for the purpose of giving effect to those provisions of the Agreement which involve joint action and, generally, with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the Parties acting jointly they are designated as the PARTIES.

2. Each Party shall be entitled to have one vote at all meetings of the PARTIES.

3. Except as otherwise provided for in this Agreement, decisions of the PARTIES shall be taken by a majority of the votes cast.

4. In exceptional circumstances not elsewhere provided for in this Agreement, the PARTIES may waive an obligation imposed upon a contracting Party by this Agreement; provided that any such decision shall be approved by approved by a two-thirds majority of the votes cast and that such majority shall comprise more than half of the Parties.

---

*Text for discussion.

5. (a) A decision by the PARTIES granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate.

(b) Any waiver granted for a period of more than one year shall be reviewed by the PARTIES not later than one year after it was granted, and thereafter annually until the waiver terminates. In each review, the PARTIES shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The PARTIES, on the basis of the annual review, may extend, modify or terminate the waiver.

Article XXV

Council

1. The PARTIES shall establish a Council which will perform such functions as may be assigned by them to facilitate the operation of this Agreement and further its objectives.

2. Each Party to this Agreement is entitled to be represented at the Council.

3. The Chairman of the Council shall be elected by the PARTIES. The Council shall establish its own rules of procedure. It may also establish such subsidiary bodies as may be necessary for the effective discharge of its functions.

Article XXVI

Technical Cooperation

1. Service providers of Parties which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the competent secretariat and shall be decided upon by the PARTIES.

Article XXVII

Relationship with Other International Organizations

The PARTIES shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as other Intergovernmental organizations concerned with services.

PART VI

FINAL PROVISIONS

Article XXVIII

Acceptance and Accession

1. This Agreement shall be open for acceptance until (...) by the governments whose schedules are contained in Annex (...).

2. Any government which does not accept this Agreement pursuant to paragraph 1 may accede to it on terms to be agreed with the PARTIES. Decisions of the PARTIES under this paragraph shall be taken by a two-thirds majority.

3. For the purposes of this Article and Article XXIX,

(a) the European Economic Community, and

[(b) any territory which possesses full autonomy in the conduct of its external economic relations and of the other matters provided for in the Agreement]

shall be deemed to be a government.

[4. Each government accepting this Agreement does so in respect of all territories under its jurisdiction, including the territories for whose international relations it is responsible, except those which are excluded by it by written notice to the depositary of this Agreement at the time of acceptance or accession.]

Article XXIX

Entry into Force

1. This Agreement, done in a single copy, in English, French and Spanish languages, each text being authentic, shall be deposited with the [Director-General of GATT] [Secretary-General of the United Nations], who shall furnish to each Party a certified copy.

2. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

3. This Agreement shall enter into force on the (---) day after (---) Parties have accepted it pursuant to paragraph 1 of Article XXVIII. For each other government it shall enter into force on the thirtieth day following the date of its accession.

Article XXX

Non-Application

1. This Agreement shall not apply [in whole or in part] as between any two Parties [if they have not entered into direct negotiations with each other on specific commitments and] if either of them, at the time either becomes a Party, does not consent to such application.

2. The PARTIES may review the application of paragraph 1 in particular cases at the request of any Party and make appropriate recommendations.

[3. At the request of any Party, the PARTIES shall establish a working party to examine the application of paragraph 1 in particular cases regarding, inter alia, appropriateness of the reason for which a Party invokes the provision of paragraph 1. With a view to enabling them to make recommendations to the Parties concerned and/or to the PARTIES.

[4. The provision of Article XXX shall not apply to those countries that have participated in the Uruguay Round, provided that they adhere to this Agreement within two years from the entry into force of it.]

Article XXXI

Denial of Benefits

A Party may deny the benefits of this Agreement to services or service providers if it establishes that they originate from a country which is not a Party to this Agreement or from another Party to whom the Party does not apply this Agreement pursuant to Article XXX.

Article XXXII

Amendments

1. Amendments to Parts I, II and III of this Agreement and any Annex provisions related thereto shall become effective in respect of those Parties which accept them, upon acceptance by two-thirds of the Parties and thereafter for each other Party upon acceptance by it.

2. Amendments to Parts IV, V and VI of this Agreement and any Annex provisions related thereto shall become effective for all Parties upon acceptance by two-thirds of the Parties.

3. Any Party accepting an amendment to this Agreement shall deposit an instrument of acceptance with Chief Executive Officer according to such procedures and within such a period as the PARTIES may specify.

Article XXXIII

Withdrawal

Any Party may withdraw from this Agreement at any time after its entry into force. Such withdrawal shall take effect upon the expiration of --- months from the day on which written notice thereof is received by the Chief Executive Officer who shall promptly inform the PARTIES. Any Party may request an immediate meeting of the Council to examine the matter.

Article XXXIV

Definition of Terms*

For the purpose of this Agreement:

(a) 'measure' includes any measure by a Party, whether in the form of a law, regulation, administrative action, rule, procedure, decision or any other form;

(b) 'supply of a service' includes the production, distribution, marketing, sale and delivery of a service;

---

*Text to be discussed.

(c) 'measures by Parties affecting the supply of a service' include measures in respect of

(i) the purchase, payment, or use of a service;

(ii) the access to and use of distribution and transportation systems and public telecommunications transport networks in connection with the supply of a service; and

(iii) the commercial presence of natural and juridical ersons of a Party supplying a service in the territory of another Party.

(d) 'natural person of any other Party' means any natural person who is a national of a Party under the law of that Party or, in the case of a Party to which Article XXVIII:3(b) applies, natural persons with the right of permanent residence in the territory of that Party;

(e) 'juridical person of any other Party' means

(i) any entity legally constituted under the law applicable in the territory of another Party and any partnership or association organized under such law, whether constituted or organized for profit or not and whether privately-owned or governmentally-owned; and

(ii) any entity legally constituted or organized under the law applicable in the territory of a Party that is owned or controlled by natural persons identified in paragraph (d) or entities identified in paragraph (e)(i).

(f) 'service provider of another Party' means any natural or juridical person of another Party that supplies a service, including any natural person of another Party employed by such a person;

(g) 'service consumer of a Party' means any natural or juridical person of a Party that receives or uses a service;

(h) 'commercial presence' means any type of business or professional presence within the territory of a Party for the purpose of supplying a service, whether through incorporation, the acquisition of existing enterprises, the creation of wholly- or partially-owned subsidiaries, joint ventures, partnerships, branches, representative offices, or otherwise.

Article XXXV

Annexes

The Annexes to this Agreement are an integral part of this Agreement.

SCHEDULE OF COMMITMENTS OF COUNTRY X

Sector or Sub-sector	Mode of Supply	Limitations and Conditions on Market Access	Conditions and Qualifications on National Treatment	[Undertakings with Respect fo Other Provisions]	[Additional Measures to Achieve Market Access]	Date of Entry into Force
	Cross-border Supply					
	Consumption Abroad					
	Presence of Natural Persons					
	Presence of [Juridical Persons]					
	Cross-border Supply					
	Consumption Abroad					
	Presence of Natural Persons					
	Presence of [Juridical Persons]					

[MARITIME TRANSPORT SERVICES

Annex

1. This Annex applies to maritime shipping services including associated ancillary services.

M.f.n.

[2. The provisions of paragraph 1 of Article II of the Agreement do not apply to measures relating to the services described in paragraph 1 above.]

[2. The provisions of paragraph 1 of Article II of the Agreement do not apply to cargo-sharing and reservation measures relating to the services described in paragraph 1 above, taken by Parties under existing [or future] bilateral agreements and arrangements, subject to the following requirements:

[(a) Parties shall phase out [by Jan.1, 199x] all measures taken by them under [existing] bilateral agreements and arrangements, negotiated between Parties in strict conformity with the provisions of the U.N. Code of Conduct for Liner Conferences and Resolution 2 on non-conference lines, which are contrary to paragraph 1 of Article II of the Agreement.]

(b) Parties shall phase out by Jan.1, 199x measures taken by them under bilateral agreements and arrangements [other than those falling under paragraph 2 (a) above], which are contrary to paragraph 1 of Article II of the Agreement.

(c) Parties undertake not to circumvent the content of paragraphs [2 (a) and] 2 (b) of this Annex by instituting new or more restrictive regulations or by extending the scope of such regulations to cover non-conference maritime transport such as bulk shipping.]

[3. The provisions of paragraph 1 of Article II do not apply to cabotage covered by the specific measures or agreements listed in the Appendix to this Annex.]

[Other Provisions

[4. The provisions of Article IV of the Agreement shall apply to all pertinent aspects associated with shipping conferences.]

[5. Pending the conclusion of negotiations on appropriate disciplines on subsidies and until the implementation of their results, Parties may introduce or apply legislation aimed at combating unfair pricing practices in maritime transport.]

[6. Parties shall not nullify or impair commitments undertaken under Articles XVI and XVII of the Agreement through the introduction of unreasonable or discriminatory restrictions on access to and use of infrastructure such as ports, terminals, berths, storage, handling and other port facilities, whether public or private, other than those justified by existing limitations of that infrastructure.]]

Review

7. Parties shall review the provisions of this Annex within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:1 of the Agreement.

[Appendix

(List as per paragraph 3 of the Annex to be added).]]

[INLAND WATERWAY TRANSPORT SERVICES

Annex

[1. This Annex applies to transport on inland waterways within a territory or which form part of the territory of one or more than one country, and/or transport on inland waterways in non-ocean-going and combined river/ocean vessels of no more than -- draft, -- weight and ... (other limiting characteristics).]]

[1. This Annex applies to transport on inland waterways covered by the specific arrangements or agreements listed in the Appendix to this text.]

M.f.n.

[2. The provisions of paragraph 1 of Article II of the Agreement do not apply to [specific arrangements or agreements listed in the Appendix to this text] [measures taken by a Party in conformity with the provisions of existing [and future] bilateral or plurilateral agreements or arrangements relating to the supply of the service. [Any such existing agreements or arrangements which are not in conformity with Article II of the Agreement shall be phased out within ... years of the entry into force of the Agreement.]]

Review

3. Parties shall review these provisions within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:I of the Agreement.]

[Appendix

(List as per paragraph 1 of the Annex to be added).]

[ROAD TRANSPORT SERVICES
Annex

1. This Annex applies to passenger and freight transport by road (i.e. truck and bus) [including associated ancillary services].

[M.f.n.

2. The provisions of paragraph 1 of Article II of the Agreement do not apply to [the establishment of commercial presence and to] measures taken by a Party in conformity with the provisions of existing [and future] bilateral or plurilateral agreements or arrangements relating to the cross-border supply of the service. [Any such existing agreements or arrangements which are not in conformity with Article II of the Agreement shall be phased out within ... years of the entry into force of the Agreement.]]

[Other provisions

3. The needs of Parties to counter and redress environmental problems stemming, inter alia, from heavy use of the road system by transit vehicles, to the extent they are not fully met by the provisions of Article VI, XIV, XVI and XVII of the Agreement, are recognized.]

Review

4. Parties shall review these provisions within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:1 of the Agreement.]

AIR TRANSPORT SERVICES

Annex

1. This Annex applies to air transport services, i.e. all transport by air of passengers, cargo or mail, whether scheduled or not, and ancillary services.

Application

2. Except as provided in paragraph 4 below, no provision of the Agreement shall apply to traffic rights [and [directly]* related activities which would limit or affect the ability of Parties to negotiate, to grant or to receive traffic rights, or which would have the effect of limiting their exercise].

[3. Notwithstanding the provisions of paragraph 2 above, the provisions of the Agreement shall apply to an agreed list of activities which shall be reviewed periodically in accordance with paragraph 6 below. The list** includes:

- aircraft repair and maintenance;
[- computer reservation systems;]
[- selling and marketing of air transport services;]
[- ground handling services.]]

Transparency

4. With regard to transparency, Article III of the Agreement shall apply, except that with respect to traffic rights [and directly related activities], Parties shall be deemed to have complied with the requirements of Article III:1-3 of the Agreement when they are in full compliance with the transparency provisions of the Chicago Convention.

Review

5. Parties shall review the scope for the application of the provisions of the Agreement to air transport services periodically, pursuant to Article XIX:1 of the Agreement.

[6. Parties shall also review the list of activities in paragraph 3 above every [3] years with a view to extending the list of activities covered by that paragraph.]

---

*The word "directly" would be required by some participants only if paragraph 3 were not to be retained.

**Definitions would be required of the items retained in this list.

[BASIC TELECOMMUNICATIONS SERVICES
Annex

1. This Annex applies to public telecommunications transport networks and services offered or required by a measure of a Party to be offered to the public generally [, as set out in the attached illustrative list of services].

M.f.n.

2. Paragraph 1 of Article II of the Agreement does not apply to measures taken by a Party relating to the supply by service providers of other Parties of services described in paragraph 1.

Review

3. Parties shall review these provisions within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:1 of the Agreement.]

[Illustrative list of basic telecommunications transport networks and services

Telephone
Telegraph
Telex
Facsimile
Packet- and circuit-switched data transmission services
Integrated services digital networks
Private leased circuits
Fibre optics transmission systems
Satellite systems]

[TELECOMMUNICATIONS
Annex

Objectives

1. Recognizing the specificities of the telecommunication services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the purpose of this Annex is to ensure that [benefits accruing to any Party under the Agreement are not nullified or impaired by the failure of another Party to carry out its obligations or commitments[1] with respect to measures affecting] [the general obligations and disciplines of the Agreement and the implementation of specific commitments provided for in Parties' schedules are not nullified or impaired by measures affecting] access to and use of public telecommunications transport networks and services.[2]

Scope

2. This Annex shall apply [, with respect to commitments included in a Party's schedule,] to:

(a) all measures of a Party that affect access to and use of public telecommunications transport networks and services; and

[(b) the manner in which such measures are enforced by a Party with respect to providers of public telecommunications transport networks and services under its jurisdiction.]

---

[1] The use of this term may need to be reviewed in light of the final text of the Agreement.

[2] The need for this paragraph may have to be reviewed in light of the final text of the Agreement including provisions on dispute settlement for non-violation nullification or impairment of benefits.

3. For the purposes of this Annex, "access to and use of" public telecommunications transport networks or public telecommunications transport services is limited to such access or use by service providers of other Parties for the provision of a service in the territory of a Party as specified in its schedule.

4. This Annex shall not apply to the cable or broadcast distribution of radio or television programming.

5. Notwithstanding the provisions of the Agreement or this Annex:

(a) A Party shall not be required to authorize a service provider of another Party to establish, construct, acquire, lease, operate, or provide telecommunications transport networks or services, unless otherwise provided for in its schedule;

(b) A Party shall not be required to establish, construct, acquire, operate or offer public telecommunications transport networks or services not offered to the public generally on the date of entry into force of the Agreement. Access to, and use of, such networks and services offered to the public generally after that date will be subject to the provisions of this Annex.

[(c) A Party shall not be required to grant market access to service providers, including telecommunications service providers, of other Parties other than as specified in its schedule.]

Definitions

For the purposes of this Annex:

6. Telecommunications means the transmission and reception of signals by any electromagnetic means.

7. Public telecommunications transport service means any telecommunications transport service

- [offered to the public generally]
- [offered to the public generally or required [, directly or indirectly,] by a measure of a Party to be offered to the public generally].

Such services may include, inter alia, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

8. Public telecommunications transport network means the public telecommunications infrastructure which permits the conveyance of telecommunications signals between and among defined network termination points.

[9. Intra-corporate communications means telecommunications [through the public telecommunications transport network]

- [by which a service provider supplying services as specified in the schedule of a Party]
- [which allow companies or firms to]

communicate[s] for internal purposes on a non-commercial basis with or among [its] [their] subsidiaries, branches [and affiliates]. For these purposes, "subsidiaries, branches [and affiliates]" shall be as defined by such Party. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services supplied to unrelated companies or firms, or offered to customers or potential customers.]

Transparency

10. In the application of Article III of the Agreement, Parties shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions; specifications of technical interfaces with such networks and services; conditions applying to attachment of terminal equipment; information on bodies responsible for the preparation and adoption of standards affecting such access and use; and notifications, registration or licensing requirements, if any.

Access to and use of Public Telecommunications Transport Networks and Services

11. Parties shall ensure that access to and use of public telecommunications transport networks and services offered within or across borders for the provision of a service, as provided for in their schedules, is accorded to service providers of other Parties on reasonable and non-discriminatory terms and conditions consistent with Articles II, VI and XVII of the Agreement.[3]

12. Parties shall ensure that service providers of other Parties may have access to and use of public telecommunications transport services they require, including national and international private leased circuits, subject to the provisions of paragraph 5 of this Annex.

---

[3] This provision may need to be reviewed in the light of the final text of the Agreement.

[13. Parties shall [endeavour to] ensure that pricing of public telecommunications transport services is cost-oriented and does not nullify or impair commitments provided for in a Party's schedule.]

[14. [In accordance with national legislation [consistent with this Agreement]] Parties shall ensure that service providers of other Parties may use public telecommunications transport networks and services for the movement of information within and across borders, [including intra-corporate communications of such service providers,] and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Party.] [Any changes [by a Party] affecting such use shall be notified [in advance] and shall be subject to consultation in accordance with relevant provisions of the Agreement.]

15. Notwithstanding the preceding paragraph, a Party may take such measures as are necessary to ensure the security, confidentiality and privacy of messages and personal data, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade in services.[4]

16. In the application of Article VI of the Agreement, Parties shall ensure that conditions are not imposed on such access and use other than as necessary:

(a) to safeguard the public service responsibilities of telecommunications transport networks and services, including the prevention of bypass of such networks and services unless allowed by a Party;

---

[4] The privacy-related aspects of this sentence may need to be reviewed in light of the final text of the provisions of the Agreement related to protection of personal privacy. Even if privacy issues are dealt with elsewhere, the aspects of this provision regarding security and confidentiality of messages, which are specific to telecommunications, may need to remain.

(b) to ensure the technical integrity of public telecommunications transport networks and services; and

(c) to ensure that service providers of other Parties provide only those services that they may provide or are authorized to provide pursuant to commitments in a Party's schedule and its laws and regulations consistent with such commitments.

17. Subject to the provisions of paragraph 16, conditions for access to and use of public telecommunications transport networks and services may include those relating to:

(a) the re-sale or shared use of such services;

(b) specification of technical interfaces with such networks;

(c) inter-operability of such services, where necessary;

(d) attachment of terminal equipment to such networks;

(e) the interconnection of private leased or owned circuits with such networks or services or with circuits leased by another service provider; and

(f) notification, registration and licensing requirements, if any.

[18. Notwithstanding the previous paragraph, a developing country Party may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Party's schedule.]

Technical Co-operation

19. Parties recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Parties endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their public telecommunications service providers and other entities in the development programmes of international and regional organizations, including the ITU, UNDP and the World Bank.

20. Parties shall encourage and support telecommunications co-operation among developing countries at the international, regional and sub-regional levels.

21. In co-operation with relevant international organizations, Parties shall make available, where practicable, to developing countries information with respect to international telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

22. Parties shall give special consideration to opportunities for the least developed countries to encourage foreign providers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services exports.

Relation to International Organizations and Agreements[5]

23. Parties recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

24. Parties recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Parties shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.]

---

[5] Paragraphs 23 and 24 may need to be reviewed in light of the final text of the provisions of the Agreement on harmonization and recognition agreements and in relation to other international agreements and organizations.

[LABOUR MOBILITY
Annex

1. The provisions of the Agreement relate to temporary movement of natural persons performing particular services in respect of which access commitments have been undertaken. They do not apply to individual job seekers, and do not concern, and should not affect, national laws and regulations regarding citizenship or immigration related to residence or employment on a permanent basis.

[2. An illustrative list of natural persons performing particular services covering broad categories of sectors and skill levels is attached to this Annex.]

[2. Negotiations shall proceed on the basis of lists of categories of persons exchanged by the Parties without prejudice to whether access in respect of any such categories of persons is subsequently bound.]

3. Market access commitments specifying the categories of physical persons for the provision of a particular service shall be negotiated in accordance with Article XVI of the Agreement, drawing on the [illustrative] list[s] as a reference point.

4. Once such a market access commitment is inscribed in the schedules, all categories of natural persons covered by the commitment shall be allowed to provide the service.

[5. The benefits from any specific commitment covering labour mobility shall not be frustrated through the application of national laws or regulations relating to the entry, stay and work on a temporary basis of physical persons.]

[6. Notwithstanding Article II of the Agreement, Parties may undertake bilateral or plurilateral arrangements providing for preferential movement of natural persons with other countries, and may impose conditions and limitations on such movement. In applying such arrangements or in imposing such conditions and limitations, Parties shall endeavour to act in the least restrictive manner possible with respect to foreign providers of services.]

[7. It is understood that nothing in the Agreement shall be construed to prevent agreements or arrangements the effect of which is the substantial integration of labour markets.]]

[AUDIOVISUAL [, BROADCASTING, SOUND RECORDING AND PUBLISHING] SERVICES*
Annex

1. This Annex applies to any activity related to the [production], [publication], distribution, broadcasting or other transmission of [audiovisual works] [films, radio and television programming, sound recordings, [books, periodicals and newspapers]] whatever the means used.

M.f.n.

2. The provisions of paragraph 1 of Article II of the Agreement do not apply to measures relating to any activities described in paragraph 1 above, that are taken by a Party in pursuance of cultural policy objectives in connection with [existing] bilateral or plurilateral agreements, arrangements or actions of international bodies.

Other Provisions

[3. It is recognized that in the activities referred to in paragraph 1 above, Parties may pursue cultural policy objectives; negotiations on specific commitments, for these activities, under Parts III and IV of the Agreement, shall respect their cultural specificities.]

[4. Nothing in the Agreement shall affect the status, as defined by each Party, of the entities providing audiovisual services in its territory.]

Review

5. Parties shall review the provisions of this annex within ... years of the entry into force of the Agreement and periodically thereafter, pursuant to Article XIX:I of the Agreement.]

---

*An alternative to an Annex could be an exception for "cultural values" under Article XIV, relating to the list of activities in paragraph 1 of this text.

FINANCIAL SERVICES

Annex[*]

---

[*] There is agreement on the need for an annex to address the specificities of the financial services sector. There is no agreement on the scope and contents of this annex.

[GUIDELINES AND RECOMMENDATIONS FOR NEGOTIATIONS ON INITIAL COMMITMENTS

Negotiations on initial commitments would proceed on the basis of the following outline:

A. The pre-Brussels phase:

1. Participants are invited to submit initial offers on a provisional basis, prior to the end of November 1990, in which they specify commitments they are willing to assume under Parts III and IV of the Agreement. Parties are also invited to furnish all relevant information which would permit an appreciation of such offers.

2. All offers would be made available, through the secretariat, to participants in the GNS in order to provide transparency.

3. Such offers may be subject to initial discussions among interested participants for the purpose of clarifying their content or commenting on them.

4. Initial offers may be subject to changes, refinement, or withdrawal.

5. The content of such offers, although not binding, would be a starting point for the actual process of negotiations on initial commitments in 1991.

B. At the Brussels meeting

1. The final text of the General Agreement on Trade in Services and the necessary annexes to it would be approved in Brussels.

2. A decision would also be approved in Brussels on the negotiation of a package of initial commitments to be concluded in 1991, such commitments entering into force at the same time as the Agreement. The decision would include guidelines for negotiations such as time limits, a political commitment from participants not to take any measures which would improve their negotiating position and leverage, as well as other elements reflected in the attached text on initial commitments.

C. The post-Brussels phase*:

1. Countries which have not submitted offers prior to the conclusion of the Uruguay Round and wishing to participate in the negotiations would be invited to submit such offers by 31 March 1991.

2. Actual negotiations on initial commitments on the basis of all offers submitted, as well as any other proposals or requests, would take place from 1 April 1991 until 30 September 1991.

3. After negotiations are concluded there would be a one-month period for the consolidation of schedules until 31 October 1991.

4. The Agreement would then be open for acceptance from 1 November 1991.

5. The Agreement would enter into force in accordance with the terms specified therein.

---

*The suggested dates are put forward on the basis that all participants would have the necessary negotiating authority for the purpose.

INITIAL COMMITMENTS (Attachment)

[to be agreed in the Uruguay Round]

1. In addition to the general obligations and disciplines of the Agreement, and in order to secure an overall balance of rights and obligations, Parties shall also negotiate specific commitments, to enter into force at the same time as the Agreement, in relation to the provisions mentioned in paragraph 2 of Article XIX of the Agreement. Such negotiations among Parties shall take place, having regard to the level of development of each participant and the situation of countries in economic transition, with a view to achieving a balance of interests.

2. Negotiations shall proceed according to the following guidelines:

(a) negotiations shall take place on the basis of an indicative list of sectors [as well as an illustrative list of physical persons];

(b) in order to provide appropriate flexibility to individual participants, in particular to individual developing countries, in line with their development situation, commitments shall be established at the appropriate level of disaggregation, in relation to categories of sectors, sectors, sub-sectors or transactions;

[(c) the extent of each Party's commitment under paragraph 3 shall take into account:

- the general level of liberalisation already achieved internationally in the services sector concerned [and its share in international trade in services], as well as the level of development and the degree of liberalization of the Party in that sector;
- the need for appropriate flexibility through binding at a more restrictive level than the existing situation particularly in relation to the individual level of development of the Party;]
- the need for negotiation on sectors and modes of delivery of priority interest to developing countries;

[(c) as a first step, and as part of these initial commitments, bind existing levels of market access and the existing extent of national treatment in all sectors.] [This provision does not apply to developing countries nor to economies in transition.]

(d) appropriate flexibility shall be negotiated for Parties, in particular for developing countries, to phase in on the basis of agreed time-frames the implementation of negotiated commitments under paragraph 3;

3. Negotiations shall take place among participants on the following:

(a) commitments to bind the existing levels of market access and/or new market access undertakings, by indicating specifically limitations and conditions on market access, in its different forms prescribed in the Agreement and/or by positively indicating the specific liberalization undertaking;

(b) commitments to bind existing conditions and qualifications on national treatment, and/or to bind the total or partial elimination of such conditions and qualifications;

[(c) any additional measures to achieve market access.]

4. Special consideration shall be given to the difficulties of least-developed countries in accepting specific liberalization commitments. [Least developed countries are not expected to make any intitial commitments.]

[ANNEX III]

[AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE IN COUNTERFEIT GOODS]

[The Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods forms an integral part of the Uruguay Round results.][1]

---

[1] The text of this agreement is as it appears in the corresponding section of Annex 1.

ANNEX IV

[BASIC ELEMENTS OF AN ORGANIZATIONAL AGREEMENT]

[The Organizational Agreement should include provisions on:

(a) the establishment of a permanent institutional structure along the lines of the structure established for the negotiations;

etc.]

APPENDIX

Page	Text	Reference
2	Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations	
	Annex I	
	Trade in Goods	
6	The Uruguay Round (1990) Protocol to the General Agreement on Tariffs and Trade and Schedules of Tariff and Non-Tariff Measure Concessions[1]	
12	Rules of Origin	MTN.GNG/NG2/W/85
30	Preshipment Inspection	MTN.GNG/NG2/W/85
43	Anti-Dumping	
44	Technical Barriers to Trade	MTN.GNG/NG8/W/83/Add.3/Rev.1
72	Import Licensing Procedures	MTN.GNG/NG8/W/83/Add.1/Rev.3
83	Subsidies and Countervailing Duties	MTN.GNG/NG10/23
135	Customs Valuation	MTN.GNG/NG8/W/83/Add.4/Rev.1 and Corr.1
138	Government Procurement	MTN.GNG/NG8/W/85/Add.1
139	Agriculture	
	Sanitary and Phytosanitary Measures	MTN.GNG/NG5/WGSP/7
182	Safeguards	MTN.GNG/NG9/W/25/Rev.3
193	[Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods][2] [Trade in Counterfeit and Pirated Goods]	

---

[1] Including Natural Resource-Based Products and Tropical Products.

[2] Cf. paragraph 1 of the Final Act.

Page	Text	Reference
238	Trade-Related Aspects of Investment Measures	
239	Textiles and Clothing	MTN.GNG/NG4/W/68
281	Article II:1(b) of the General Agreement on Tariffs and Trade	MTN.GNG/NG7/22, Annex 1
284	Article XVII of the General Agreement on Tariffs and Trade	MTN.GNG/NG7/22, Annex 2
287	[Balance of Payments Provisions of the General Agreement on Tariffs and Trade]	
288	Dispute Settlement	
306	Article XXIV of the General Agreement on Tariffs and Trade	MTN.GNG/NG7/22, Annex 7
311	Article XXV of the General Agreement on Tariffs and Trade	MTN.GNG/NG7/22, Annex 3
313	Article XXVIII of the General Agreement on Tariffs and Trade	MTN.GNG/NG7/22, Annex 4
316	Article XXXV of the General Agreement on Tariffs and Trade	MTN.GNG/NG7/22, Annex 5
318	Paragraph 1(b) of the Protocol of Provisional Application of the General Agreement on Tariffs and Trade and of corresponding provisions in Protocols of Accession	MTN.GNG/NG7/22, Annex 6
320	Functioning of the GATT System	
327	Action on Rollback[1]	MTN.SB/14

---

[1] Cf. paragraph 16 of the Report of the Chairman of the Surveillance Body (MTN.SB/14).

Page	Text	Reference
	Annex II	
328	Trade in Services	
	[Annex III]	
383	[Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods]	
	Annex IV	
384	[Basic Elements of an Organizational Agreement]	

For the People's Democratic Republic of Algeria:

For Antigua and Barbuda:

For the Argentine Republic:

For Australia:

For the Republic of Austria:

For the People's Republic of Bangladesh:

For Barbados:

For the Kingdom of Belgium:

For Belize:

For the Republic of Benin:

For the Republic of Bolivia:

For the Republic of Botswana:

For the Federative Republic of Brazil:

For Burkina Faso:

For the Republic of Burundi:

For the Republic of Cameroon:

For Canada:

For the Central African Republic:

For the Republic of Chad:

For the Republic of Chile:

For the People's Republic of China:

For the Republic of Colombia:

For the People's Republic of the Congo:

For the Republic of Costa Rica:

For the Republic of Côte d'Ivoire:

For the Republic of Cuba:

For the Republic of Cyprus:

For the Czech and Slovak Federal Republic:

For the Kingdom of Denmark:

For the Dominican Republic:

For the Arab Republic of Egypt:

For the Republic of El Salvador:

For Fiji:

For the Republic of Finland:

For the French Republic:

For the Gabonese Republic:

For the Republic of the Gambia:

For Germany:

For the Republic of Ghana:

For the Hellenic Republic:

For the Republic of Guatemala:

For the Republic of Guyana:

For the Republic of Haiti:

For the Republic of Honduras:

For Hong Kong:

For the Republic of Hungary:

For the Republic of Iceland:

For the Republic of India:

For the Republic of Indonesia:

For Ireland:

For the State of Israel:

For the Italian Republic:

For Jamaica:

For Japan:

For the Republic of Kenya:

For the Republic of Korea:

For the State of Kuwait:

For the Kingdom of Lesotho:

For the Grand Duchy of Luxembourg:

For the Democratic Republic of Madagascar:

For the Republic of Malawi:

For Malaysia:

For the Republic of Maldives:

For the Republic of Malta:

For the Islamic Republic of Mauritania:

For Mauritius:

For the United Mexican States:

For the Kingdom of Morocco:

For the Union of Myanmar:

For the Kingdom of the Netherlands:

For New Zealand:

For the Republic of Nicaragua:

For the Republic of the Niger:

For the Federal Republic of Nigeria:

For the Kingdom of Norway:

For the Islamic Republic of Pakistan:

For the Republic of Paraguay:

For the Republic of Peru:

For the Republic of the Philippines:

For the Republic of Poland:

For the Portuguese Republic:

For Romania:

For the Rwandese Republic:

For the Republic of Senegal:

For the Republic of Sierra Leone:

For the Republic of Singapore:

For the Republic of South Africa:

For the Kingdom of Spain:

For the Democratic Socialist Republic of Sri Lanka:

For the Republic of Suriname:

For the Kingdom of Sweden:

For the Swiss Confederation:

For the United Republic of Tanzania:

For the Kingdom of Thailand:

For the Togolese Republic:

For the Republic of Trinidad and Tobago:

For the Republic of Tunisia:

For the Republic of Turkey:

For the Republic of Uganda:

For the United Kingdom of Great Britain and Northern Ireland:

For the United States of America:

For the Eastern Republic of Uruguay:

For the Republic of Venezuela:

For the Socialist Federal Republic of Yugoslavia:

For the Republic of Zaire:

For the Republic of Zambia:

For the Republic of Zimbabwe:

For the European Communities: